

962

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**FROM:** Economic Development Agency

**SUBMITTAL DATE:**  
December 2, 2010

**SUBJECT:** Option Agreement and Lease Agreement – Solar Facilities, Blythe Airport

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Option Agreement between the County of Riverside and NRG Solar Blythe II, ("Optionee"), granting Optionee the option to lease up to 829 acres of certain real property, known as Assessor's Parcel Numbers 821-080-040, 821-080-041, 821-110-002, and 821-110-003, located at the Blythe Airport, County of Riverside;
2. Approve the attached lease agreement between the County of Riverside and NRG Solar Blythe II, for lease approximately 156 acres of real property, known as Assessor Parcel Number 821-110-003, located at Blythe Airport, County of Riverside;

(Continued)

*Lisa Brandl for*  
Robert Field  
Assistant County Executive Officer/EDA  
By Lisa Brandl, Managing Director

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/11

**COMPANION ITEM ON BOARD OF DIRECTORS AGENDA:** No

**SOURCE OF FUNDS:** Revenue Lease

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**

**County Executive Office Signature** *Jennifer L. Sargent*  
BY: *Jennifer L. Sargent*  
Jennifer L. Sargent

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Benoit, seconded by Supervisor Buster and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Benoit and Ashley  
Nays: None  
Absent: Tavaglione and Stone  
Date: December 14, 2010  
xc: EDA

Kecia Harper-Ihem  
Clerk of the Board

By: *Shirley Buster*  
Deputy

Prev. Agn. Ref.: 3.9, May 30, 1997; 3.42, October 5, 2010

District: 4

Agenda Number:

3.29

FORM APPROVED COUNTY COUNSEL  
BY: *Antia C. Willis* 12-13-10  
DATE: *Antia C. Willis*

Dep't Recomm.: ☐ Consent ☐ Policy ☒ Policy  
Per Exec. Ofc.: ☐ Consent ☐ Policy ☒ Policy

**RECOMMENDED MOTION:** (Continued)

3. Authorize the Chairman of the Board to Execute the option agreement and the lease agreement on behalf of the county; and
4. Authorize the Assistant County Executive Officer/EDA, or his designee, to execute any other documents and administer all actions to complete this transaction.

**BACKGROUND:**

On May 20, 1997, the Board of Supervisors approved a lease agreement between the County of Riverside and the City of Blythe whereby the county leased the Blythe Airport to the City of Blythe (Blythe Airport Lease) for a period of thirty years. Due to the Blythe's financial burden of supporting the airport operations and maintenance, the Blythe Airport Lease was terminated by the county and Blythe with a lease termination agreement, approved by the Board of Supervisors on October 5, 2010.

Prior to the termination of the Blythe Airport Lease, the City of Blythe entered into negotiations with U.S. Solar Holdings, LLC, an affiliate entity of USSV Land Company, LLC, for an option agreement and lease agreement, to lease real property for the purpose of planning, constructing, and operating Photovoltaic Solar Facilities on approximately 829 acres of airport property. In August of 2009, US Solar completed the California Environmental Quality Act (CEQA) process with the City of Blythe as the lead entity. Along with the termination of the Blythe Airport Lease, these agreements between the City of Blythe and US Solar were terminated to enable the county to move forward directly with US Solar on new option and lease agreements for the benefit of the airport property.

Due to the aforementioned situation, US Solar, as the applicant, has been submitting all necessary documents and completing processes to obtain land use entitlements and approvals with the county and other regulatory agencies. The applicant processed the necessary CEQA related studies and analysis, which is contained in Environmental Assessment 42340 associated with Plot Plan 24616 with the County Planning Department, acting as the lead agency. Environmental Assessment No. 42340 includes the contemplation of entering into an option agreement and lease agreement(s) for the real property. US Solar also submitted a National Environmental Policy Act (NEPA) Environmental Impact Statement for the Blythe Airport Solar 1 project to the Economic Development Agency (EDA). As the airport sponsor for the county, EDA has submitted the NEPA for Federal Aviation Administration approval.

All potentially significant effects of the actions described in this Form 11 have been adequately analyzed in the Environmental Assessment No. 42340 which was prepared for Plot Plan 24616; all potentially significant effects of the actions have been avoided or mitigated pursuant to EA 42340 and a Mitigated Negative Declaration will be prepared; the actions will not result in any new significant environmental effects not identified in EA 42340; the actions will not substantially increase the severity of the environmental effects identified in EA 42340; no considerably different mitigation measures have been identified; and no mitigation measures found infeasible have become feasible. As a result, no further environmental documentation is required for California Environmental Quality Act purposes.

(Continued)

**BACKGROUND:** (Continued)

The purpose of this Form 11 is to request authorization and obtain Board approval for the option and lease agreement (the first of potentially up to five) which will allow the county, as the owner and Lessor of the Blythe Airport, to enter into a Option Agreement and Lease with NRG Solar Blythe II, a contract partner of US Solar Holdings, LLC, resulting in NRG Solar Blythe II to move forward on its planning, construction, and operation of the proposed Solar Facilities. This first lease agreement is for 156 acres of real property. Up to four additional lease agreements would be brought to the Board for approval, if and, when Optionee exercises an option to lease additional acreage of real property not-to-exceed the 829 acres of Assessor's Parcel Numbers 821-080-040, 821-080-041, 821-110-002, and 821-110-003, located at the Blythe Airport, County of Riverside.

The terms of the agreements are as follows:

Option Agreement: NRG Solar Blythe II, will have up to five years to exercise options to lease and occupy various portions of the 829 acres, for the purpose of planning, constructing, and operating solar facilities. The terms of the Option Agreement are as follows:

Effective Date:	Execution by the Board of Supervisors of this agreement
Total Acreage:	Approximately 829 acres
Use:	Photovoltaic Solar Facilities
Option Term:	Five (5) Years, 2 year initial term w/3 one-year option period extensions
Options:	Options to lease, Can be exercised up to five times
Option Consideration:	\$50,000 per option term period, payable to county as Optionor

Lease Agreement: NRG Solar Blythe II, after exercising its option rights for portions of the acreage above, will enter into separate lease agreement(s) with the county for the respective acreage based on each option exercised, as defined in the lease agreement identified in motion 2 of this Form 11. The terms of the lease agreement are as follows:

Effective Date:	Execution by the Board of Supervisors of this agreement
Total Acreage:	Approximately 829 acres
Use:	Photovoltaic Solar Facilities
Term:	Thirty (30) Years Initial Lease Term, 4 five year options to extend
Rental:	\$270 per gross acre per year to be increased by the greater of 2 ½%, or 7% of the appraised value every five years
Completion Date:	No later than five (5) years from the Effective Date

**FINANCIAL DATA:**

This is a Revenue Lease and no Departmental funding is required.

## OPTION AGREEMENT

This OPTION AGREEMENT (this "Agreement") is made as of the \_\_\_\_ day of December, 2010 (the "Effective Date") by and between THE COUNTY OF RIVERSIDE a political subdivision of the State of California ("Optionor"), and NRG SOLAR BLYTHE II, a Delaware limited liability company ("Optionee"), with reference to the following facts and objectives:

A. Optionor is the owner of the fee simple interest in certain real property known as the "Blythe Airport" situated in the County of Riverside, State of California.

B. Optionor desires to grant to Optionee, and Optionee desires to obtain from Optionor, the right to lease the Property (as hereinafter defined) pursuant to this Agreement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Optionor and Optionee hereby agree as follows:

### 1. Option to Lease.

(a) Grant of Option. Subject to the satisfaction of the terms and conditions set forth in this Agreement, Optionor hereby grants to Optionee the right (the "Option") to lease the Property pursuant to the terms and conditions set forth in this Agreement and the form of the lease agreement (the "Lease") attached hereto as Exhibit "A" and by this reference incorporated herein. For purposes of this Agreement, "Property" means (i) the land consisting of approximately 829 acres described on Exhibit "B" attached hereto (the "Land"), and (ii) use of any easements, rights-of-way and any other rights, privileges, including ingress and egress to, from and appurtenant thereto or otherwise benefiting the Land or Optionor relating to the Land other than water and mineral rights (collectively, the "Appurtenant Rights").

(b) Term of Option. The period of time for the exercise of the Option (the "Option Period") shall commence on the date the County of Riverside Board of Supervisors ("Board") approves and executes this Agreement ("Effective Date") and shall expire at 5:00 p.m. Pacific time on the Expiration Date. For purposes of this Agreement, "Expiration Date" means the date that is twenty-four (24) months after the Effective Date, as it may be extended pursuant to Section 1(d) below. For purposes of this Agreement, "Initial Option Period" means the Option Periods, without taking into account any extensions of the Expiration Date. Notwithstanding any other provision herein, Optionor shall have the right to terminate this Agreement only in the event that Optionee fails to perform, keep or observe any of Optionee's duties or obligations; provided, however, that Optionee shall have thirty (30) days to cure a breach or default after written notice thereof has been received by Optionee, excepting therefrom a default for non-payment of any Option Period Payment (as hereinafter defined) in which case Optionee shall have the cure period described in Section 1(d)(3). In the event that Optionee fails to pay an Option Period Payment following such cure period, Optionor shall have the right to terminate the Agreement after providing written notice to Optionee.

### (c) Exercise of Option; Failure to Exercise.

(1) The Option may be exercised in whole or in part (and on multiple occasions to the extent exercised in part) at any time during the Option Period provided that Optionee is not then in default (after the expiration of any applicable cure periods) under this Agreement or any Lease then in effect with Optionor. The Option may be exercised, if at all, by delivery of written notice to

Optionor ("Option Notice"), which shall include a legal description, created at Optionee's sole cost, of which portion of the Land (if not all) Optionee is exercising its right to lease (the "Leased Land"; together with the Appurtenant Rights, the "Leased Property"); provided the portion of Land to be leased is done in a reasonable order so not to create issues with access or future usability; provided, however, that Optionor acknowledges that Optionee shall have the right to exercise the Options in accordance with Optionee's Site Phasing Plan, attached hereto as Exhibit "B-1" and by this reference incorporated herein. Optionor shall have the right to provide input on the order that the Land is leased. Not later than sixty (60) days after Optionee's exercise of an Option, Optionor and Optionee shall duly execute and acknowledge a copy of the Lease, with the legal description of the Leased Property set forth in the Option Notice attached thereto, and Optionor to deliver the same to Optionee. For purposes of this Agreement, "Closing" shall mean Optionor's delivery to Optionee of a duly executed and acknowledged Lease with respect to the Leased Property. The Lease shall be effective on the date the Lease is approved by the Board. For sake of clarity, each exercise of an Option by Optionee shall result in a separate and independent Lease with respect to the Leased Property described in the applicable Option Notice from Optionee; *provided, however, that* Optionee may not exercise the Option more than five (5) times (*i.e.*, there shall not be more than five (5) separate Leases). No Option rights shall be granted to Optionee after five (5) years from the Effective Date of this Agreement.

(2) This Agreement shall terminate following the end of the Option Period if and to the extent the Option is not exercised, whereupon the Option Period Payment (as hereinafter defined) shall be retained by Optionor. In the event that FAA Approval (as hereinafter defined) is not granted prior to the expiration of the Initial Option Period, Forty Thousand Dollars (\$40,000) of the Initial Option Period Payment shall be belong to and retained by Optionor in consideration of granting this Option; the rest of the Initial Period Payment shall be returned to Optionee and this Agreement shall be terminated; except in the event of Optionee's uncured default past the cure period set forth in Section 1(b) above, all shall be retained by Optionor. Upon termination of this Agreement, the parties shall each bear their own respective costs in connection with the transactions contemplated by this Agreement, and the parties shall have no further rights or obligations under this Agreement other than the provisions of this Agreement that expressly survive such termination (the "Surviving Obligations"). For purposes of this Agreement, "FAA Approval" means the approval by the Federal Aviation Administration ("FAA") to the land use change for Optionee's proposed use of the Property and the National Environmental Policy Act ("NEPA") Environmental Assessment Document, in each case if and to the extent required by applicable FAA law or regulations. In the event that the FAA Approval has not been granted prior to the expiration of the Initial Option Period, Optionor and Optionee may agree to extend the time until such approval has been obtained, but not more than a total of sixty (60) months. Optionor and Optionee shall each use reasonably practicable efforts to obtain the FAA Approval, including, but not limited to, preparing and conducting activities to satisfy the National Environmental Policy Act, in each case if and to the extent required thereby, as soon as reasonably practicable but not later than prior to the expiration of the Option Period. Each party shall assist the other party in obtaining the FAA Approval as soon as reasonably practicable.

(d) Option Consideration.

(1) Initial Option Period Payment. The Initial Option Period is granted in consideration of Optionee's payment of Fifty Thousand Dollars (\$50,000) (the "Initial Option Period Payment") to Optionor, due and payable when this Agreement is approved and executed by the Board. No consideration shall be applied to or credited against any amounts due under the Lease(s) if an Option to Lease is exercised. It is understood that in all cases (other than as provided in Sections 1(c)(2) and 3(c)) the Initial Option Period Payment shall be non-refundable and deemed as consideration for Optionor's the execution of this Agreement. Optionor shall obtain Extension Option Periods, as

described below, by delivery of written notice to Optionor no later than thirty days prior to expiration of the Initial Option Period or any Extension Option Period. If Optionee exercises an Extension Option Period, then the applicable Extension Option Period Payment shall be due from Optionee at the same time the Option Notice is given to Optionor.

(2) Extension Option Period Payments. Optionee shall have the right (each, an "Extension Option Period" and, collectively, the "Extension Option Periods") to extend the Option Period as follows:

(i) An additional twelve (12) months (thirty-six (36) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000).

(ii) An additional twelve (12) months (forty-eight (48) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000)(not including the Initial Option Period Payment or the amount set forth in the preceding clause (a)).

(iii) An additional twelve (12) months (sixty (60) months total) by payment to Optionor of Fifty Thousand Dollars (\$50,000)(not including the Initial Option Period Payment or the amounts set forth in the preceding clauses (a) and (b)).

For purposes of this Agreement, "Extension Option Period Payment" means any payments made by Optionee to exercise the Extension Option Periods pursuant to this Section 1(d)(2).

(3) In the event that Optionee fails to make an Extension Option Period Payment when required by this Section 1(d)(2), then Optionor shall provide Optionee with notice of such nonpayment and, if Optionee does not make the required payment within fifteen (15) days of its receipt of such notice, then the Option Period shall terminate. For purposes of this Agreement, "Option Period Payment" means the Initial Option Period Payment together with any Extension Option Period Payments made by Optionee.

(e) Retention of Option Period Payment. Any of the Option Period Payments shall be deemed earned by Optionor in consideration of granting the Option to Optionee except in the event of a default of this Agreement by the Optionor. The right to request an extension of the Option Period is contingent upon the Optionee not then being in default of this Agreement beyond any applicable cure periods provided herein.

## 2. Right of Entry on the Property.

(a) Upon approval and full execution of this Agreement, Optionee shall have performed all of its due diligence activities to determine the suitability of Property for Optionee's intended purpose.

(b) Physical Inspections. During the Option Period, Optionee may investigate matters relating to or affecting the Property and the additional feasibility studies for Optionee's desired use of the Property, and conduct inspections, tests and studies with respect to the physical and environmental condition of the Property so long as they are not materially disruptive to the Airport property or operations. Optionee and Optionee's consultants, agents, engineers, inspectors, contractors, employees and others acting for, at the request of or on behalf of, Optionee shall be given access to the Property for the purpose of performing such inspections of the Property ("Physical Inspections"). Optionee shall undertake the Physical Inspections at its sole cost and expense. Optionee shall defend,

indemnify and hold Optionor free and harmless from any liability, claim, cost or expense reasonably incurred by Optionor as a result of the 1) acts or omission by Optionee; 2) any Physical Inspections; 3) the breach of any representations or warranties made by Optionee under this Agreement; *provided, however, that* Optionee shall not be required to defend, indemnify or hold Optionor harmless on account of (i) Optionee's uncovering, disclosure, or identification of any existing conditions on the Property or any adjacent property except to the extent exasperated by Optionee, or (ii) to the extent such liability, cost or expense is attributable to or caused by Optionor's negligent acts or omissions or willful misconduct.

3. Representations and Warranties.

(a) Optionor's Representations. Optionor hereby makes the following representations and warranties, each as of the Effective Date and the date of each Closing:

(1) Optionor is duly organized, validly existing and in good standing under the laws of the State of California. Optionor has the right, power, legal capacity and authority to execute, deliver and perform this Agreement and, other than the FAA Approval, any consent required as a condition to the authority of Optionor to execute, deliver and perform this Agreement has been obtained. The individuals who have executed this Agreement on behalf of Optionor have the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Optionor.

(2) There is no action, suit or proceeding pending or, to the best of Optionor's knowledge, threatened against Optionor or the Property in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Optionor to carry out the transactions contemplated by this Agreement. Optionor has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Optionor has not received any written notice of (i) the filing of an involuntary petition by Optionor's creditors, (ii) the appointment of a receiver to take possession of all, or substantially all, of its assets, or (iii) the attachment or other judicial seizure of all, or substantially all, of its assets.

(3) Subject to obtaining FAA Approval, neither entering into this Agreement nor performance of any of Optionor's obligations under this Agreement shall violate the terms of any contract, agreement or instrument to which Optionor is a party or any laws. Optionor has not received any notices that the Property is in violation of any applicable law, statute, ordinance, regulation or governmental order (collectively, "Applicable Law"). Optionor makes no representation or warranty as to whether the FAA will approve this Agreement. Optionor has complied with the requirements of the California Environmental Quality Act and National Environmental Policy Act, each as amended to date, in approving and entering into this Agreement and each Lease.

(4) Optionor shall not enter any agreement which would unduly interfere with the use and enjoyment of the Leased Property which could survive the Closing. Additionally, Optionor shall not alienate, lien, encumber or otherwise transfer all or any portion of or interest in the Property during the Option Period that would unduly interfere with the use and enjoyment of the Leased Property.

(5) There are no adverse or other parties in possession of the Property or of any part thereof, and no party has been granted any license, lease or other right relating to the use or possession of the Property.

(6) The Property is free and clear of any monetary liens and encumbrances, agreements or instruments that could have the effect of causing the termination of this Agreement or any Lease.

(b) Optionee's Representations. Optionee hereby makes the following representations and warranties, each as of the Effective Date and the date of each Closing:

(1) Optionee is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Optionee has the right, power, legal capacity and authority to execute, deliver and perform this Agreement and any consent required as a condition to the authority of Optionee to execute, deliver and perform this Agreement has been obtained. The individuals who have executed this Agreement on behalf of Optionee have the right, power, legal capacity and authority to execute, deliver and perform this Agreement on behalf of Optionee.

(2) There is no action, suit or proceeding pending or, to the best of Optionee's knowledge, threatened against Optionee in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Optionee to carry out the transactions contemplated by this Agreement. Optionee has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, admitted in writing its inability to pay its debts as they come due or made an offer of settlement, extension or composition to its creditors generally. Optionee has not received any written notice of (i) the filing of an involuntary petition by Optionee's creditors, (ii) the appointment of a receiver to take possession of all, or substantially all, of Optionee's assets, or (iii) the attachment or other judicial seizure of all, or substantially all, of Optionee's assets.

(3) Neither the entering into this Agreement nor this performance of any of Optionee's obligations under this Agreement shall violate the terms of any contract, agreement or instrument to which Optionee is a party or any laws.

(4) Optionee hereby expressly represents and warrants to Optionor that prior to the Closing of a Lease, Optionee will have had the opportunity to make and will have made such an investigation and inspection of all aspects of the condition of the Leased Property was reasonably necessary and appropriate and whether it is suitable for the purposes in which it was leased. Optionee is relying upon its own inspections and investigations of the Property.

(c) Breach of Representations, Warranties and/or Covenants. If at or prior to Closing any party's representations, warranties and/or covenants are breached, then the other party may (but shall not be obligated to) cause the cure of such representations, warranties and/or covenants, and thereafter offset all costs and expenses of the breaching party in connection with such cure against any amounts owing under the Lease. The provisions of this Section shall survive the Closing. If the non-breaching party does not elect to cure such breach, then it may terminate this Agreement, whereupon (1) if Optionor is the breaching party, Optionor shall return the Option Period Payments to Optionee within twenty (20) days of such termination, and (2) if Optionee is the breaching party, Optionor shall retain the Option Period Payments made by Optionee.

4. Lender Requirements. Optionor, at Optionee's sole cost and expense, agrees to use reasonably practicable efforts to execute such documents and take such actions as Optionee or Optionee's lender(s) may from time to time request to accommodate any financing or credit facility of Optionee and/or its successors' assigns and affiliates, including, without limitation, (i) subordinating this Agreement and the Lease to the liens, rights and interests of such lenders, including obtaining a Nondisturbance Agreement, (ii) amending the Lease to conform to such lenders' requirements, (iii)



executing estoppel certificates from time to time covering matters as such lenders may request, and (iv) joining the execution of or consenting to a leasehold deed of trust whereby such lenders take a security interest in the leasehold interest created by a Lease. For purposes of this Agreement, "Nondisturbance Agreements" mean nondisturbance agreements (in recordable form and otherwise in form and substance reasonably acceptable to Optionee and Optionor) from any party reasonably requested by Optionee when needed for Lender Requirements. By way of example and not limitation, the Nondisturbance Agreements shall provide that the applicable counterparty agrees that upon any enforcement of its interest in the Property, (1) this Agreement would remain in full force and effect as a direct agreement between such counterparty and Optionor and (2) any Lease then in effect would become a direct lease between such counterparty, as landlord, and the lessee thereunder, as tenant. The provisions of this Section shall survive the Closing.

5. Permitted Encumbrances. Optionee acknowledges that it has had an opportunity to perform any due diligence on the Property and an opportunity to object to any encumbrances that would unduly interfere with the use and enjoyment of the Leased Property. Upon delivery of the Option Notice, Optionor agrees that it will lease to Optionee the Leased Property under a Lease Agreement. Optionor is not obligated to effect any change or clear any title matters. During the Option Period, Optionor shall not grant or permit any easement, lien or other encumbrance to be filed against the Property except those permitted under Optionor's reserved rights in the Lease Agreement (a) without the prior written notice to Optionee or (b) that will unduly interfere with the use of the Leased Property. Optionee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring.

6. No Interference: No Third Party Rights. During the Option Period, Optionor will not construct or install or permit the construction or installation of any structure or other improvement on the Property that would unduly interfere with or impair Optionee's access to the Property for the purposes set forth in this Agreement or with Optionee's intended use of the Property. Optionor further agrees that Optionor will not take any action or grant any third party any rights in any portion of the Property that could materially interfere with Optionee's intended uses of the Property. The provisions of this Section shall survive the Closing.

7. Cooperation. Optionor agrees to cooperate with Optionee in all reasonable respects in connection with seeking and obtaining all necessary or appropriate approvals for the Project, or any other project that Optionee may plan with respect to the Property provided that such cooperation shall impose no expense or liability upon Optionor.

8. Brokers. Each party hereto represents and warrants to the other that it has dealt with no brokers or finders in connection with this transaction. Each party hereto agrees that if any person or entity makes a claim for brokerage commissions or finder's fees related to the sale of the Property (or any portion thereof) by Optionor to Optionee, and such claim is made by, through or on account of any acts or alleged acts of said party or its representatives, said party will protect, indemnify, defend and hold the other party free and harmless from and against any and all loss, liability, cost, damage and expense (including reasonable attorneys' fees) in connection therewith. The provisions of this Section shall survive Closing or any termination of this Agreement.

9. Condemnation. If, before the Closing Date, proceedings are commenced or threatened for the taking by exercise of the power of eminent domain of the Property (or any portion thereof) by an entity other than Optionor, Optionee shall have the right to terminate this Agreement by delivering written notice thereof to Optionor, whereupon this Agreement shall terminate, the Option Period Payment shall be promptly returned to Optionee in accordance with Section 1. herein, and the parties shall have no

further obligations to each other than Surviving Obligations. If only a portion of the Property is subject to eminent domain and Optionee's projects are still viable in Optionee's judgment, then Optionee may elect to maintain the validity of this Agreement and receive the return of a pro rata portion of the Option Period Payment based on the acreage of the Land subject to eminent domain as it relates to the entire acreage of the Land.

10. General Provisions. The parties hereby agree to the following general provisions:

(a) Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein. This Agreement may not be amended without the written consent of all parties.

(b) Confidentiality and Public Disclosure. Optionee acknowledges that Optionor is a public entity subject to public disclosure laws. To the extent permitted by law, including but not limited to the Public Records Act, Optionee and Optionor agree that the "Confidential Information" (as hereinafter defined) shall be maintained confidential between Optionee and Optionor and their respective consultants, prospective lenders, advisors and legal counsel (the forgoing parties collectively, "Consultants"). The parties agree that they and their Consultants shall not disclose any of the Confidential Information to any other third parties. The parties agree to provide copies of this Agreement to each of their respective Consultants and require each of the Consultants to agree to be bound by the terms herein. Notwithstanding the foregoing, this paragraph shall not apply if any party is required to disclose any Confidential Information, with advice of counsel, under applicable law or Optionor's contractual obligations existing as of the Effective Date. The term "Confidential Information" for purposes of this Section 11(b) shall include: (i) information provided or exchanged between the parties to this Agreement relating to the potential terms of the transaction including any offers, counteroffers and agreements (including this Agreement) exchanged between Optionee and Optionor; (ii) information disclosing that Optionee and Optionor are in agreement for the Lease of the Property; and (iii) information regarding Optionee's proposed uses of the Property. Confidential Information shall not include public information including title information, information submitted for approval by the governing body of the Optionor, information not exempt from disclosure by Optionor and information previously intentionally released by Optionee to the general public regarding the Property. The provisions of this Section 11(b) shall survive the Closing or any termination of this Agreement.

(c) Memorandum. Concurrently with the mutual execution of this Agreement (or as soon thereafter as reasonably practicable), Optionor shall execute, acknowledge and deliver to Optionee a fully executed and notarized memorandum of option in the form attached hereto as Exhibit C (the "Memorandum of Agreement"), thereafter Optionee may cause it to be promptly recorded in the Official Records of Riverside County, California. If this Option Agreement is terminated, Optionee shall execute, acknowledge and deliver a quitclaim deed to Optionor within ten (10) days after termination and to execute, acknowledge and deliver any other documents required by any title company to remove the cloud of this Agreement from the Property.

(d) Attorney's Fees. For actions for the enforcement of this Agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

(e) Governing Law. This Agreement, and the rights and obligations of the parties hereunder, shall be construed and enforced in accordance with the laws of the State of California, without regard to such state's choice of law provisions.

(f) Further Assurances. Each party agrees to perform in good faith, any and all further steps and actions, and shall execute and acknowledge any and all further documents, as may be reasonably necessary and/or expedient in order to effectuate the intents and purposes of this Agreement.

(g) Assignment. Optionee may not assign its rights or obligations under this Agreement without the prior written consent of Optionor, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that Optionee may, without Optionor's prior consent, assign its rights and obligations under this Agreement, in whole or in part, to any party that Optionee controls, is under common control with Optionee or that controls Optionee. In the event of any assignment, Optionee shall remain liable for all duties and obligations of this Agreement.

(h) Notices. All notices, demands, requests, and exercises under this Option Agreement by either party shall be hand delivered or sent by United States Mail registered or certified, postage prepaid, addressed to the other party as follows:

If to Optionor:

Economic Development Agency  
Aviation Division  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-8916  
Facsimile: (951) 698-7920

With a copy to:

Economic Development Agency  
Real Estate Division - Leasing  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-4820  
Facsimile: (951) 955-4837

If to Optionee:

NRG SOLAR BLYTHE II  
1015 West Hays Street  
Boise, Idaho 83702  
Attn: Bob Mooney  
Telephone: (208) 338-2603  
Facsimile: (208) 890-0369

With a copy to:

Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, CA 90067  
Attn: Stephane Nguyen  
Telephone: (310) 734-5231  
Facsimile: (310) 734-5299

Notices, demands, requests, and exercises served in this manner shall be considered sufficiently given or served for all purposes under this option at the time the notice, demand or request is hand-delivered or when postmarked to the addresses shown. These addresses may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of this notice.

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement and made it as of the Effective Date.

OPTIONOR:

THE COUNTY OF RIVERSIDE,  
*a political subdivision  
of the State of California*

By: Marion Ashley  
Marion Ashley, Chairman  
Board of Supervisors

ATTEST:  
KECIA HARPER-IHEM, Clerk  
By: Kecia Harper-Ihem  
DEPUTY

OPTIONEE:

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 12-13-10  
SYNTHIA M. GUNZEL DATE

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*a political subdivision  
of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

OPTIONEE:

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By:  \_\_\_\_\_  
Tim Hemig, Vice President

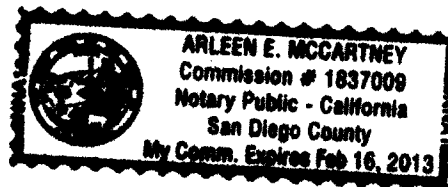
State of California )  
County of SAN DIEGO

On December 8, 2010, before me, ARLEEN E. MCCARTNEY, a notary public for said county and said state, personally appeared TIM HEMIG who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Arleen E Mc Cartney (Seal)



State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

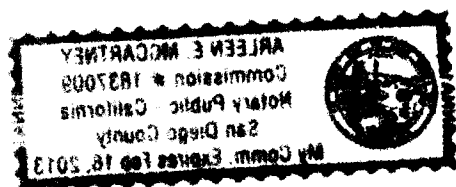


EXHIBIT A

Form of Lease

[Attached hereto and made a part hereof]



## **LEASE AGREEMENT**

This LEASE AGREEMENT (this "**Lease**"), effective as of the Closing (the "**Effective Date**"), is by and between THE COUNTY OF RIVERSIDE, as lessor, a political subdivision of the State of California (the "**County**"), and \_\_\_\_\_, a Delaware limited liability company, as lessee ("**Lessee**"), with reference to the following facts and objectives:

A. The County is the owner of record of all of that certain real property consisting of approximately 3,904 acres of land and improvements therein, (the "**Property**") situated at 17710 W. Hobsonway, Riverside County, California, more commonly known as "**Blythe Airport**".

B. The County and Lessee entered into that certain Option Agreement (the "**Option Agreement**") dated as of December \_\_, 2010, whereby Lessee has been granted the right to lease from the County portions of the Blythe Airport when and if Lessee exercises any or all of the Option described therein.

C. The County desires to lease to Lessee, and Lessee desires to lease, a portion of real property within the Blythe Airport, consisting of approximately \_\_\_\_\_ acres of land for the use and purposes provided herein.

D. For purposes of this Lease, "**Governing Authority**" means any appropriate federal, state or local agency that has jurisdiction over the matters to be reviewed and approved. Capitalized terms used, and not otherwise defined, herein shall have the same meanings ascribed to them in the Option Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Lessee hereby agree as follows:

## **ARTICLE I** **LEASE OF PROPERTY**

**Section 1.1 Leased Property.** The County, in consideration of the Rent which Lessee hereby agrees shall be paid, does hereby lease unto Lessee, and Lessee does hereby lease from the County, the Leased Property as legally described in Exhibit "A" and as depicted on Exhibit "B", attached hereto and by this reference incorporated herein, which Leased Property shall include all of the County's rights and privileges in and to the real property comprising the Leased Property and the Appurtenant Rights. For sake of clarity, this Lease does not grant any water or mineral rights to Lessee.

## **ARTICLE II** **TERM OF LEASE**

**Section 2.1 Term.** Unless sooner terminated as expressly herein provided, this Lease shall continue in effect for a term commencing on the Effective Date and ending at midnight, Pacific Standard Time, on the date that is thirty (30) years after the Effective Date (the "**Initial Term**"). The Initial Term, as it may be extended in accordance with Section 2.2 below, is referenced to herein as the "**Term**".

**Section 2.2 Extension Term.** Lessee shall have four (4) options (each, an "**Option**" and collectively, the "**Options**") to extend the Term for an additional period of five (5) years per Option (each, an "**Extension**" and collectively, the "**Extensions**") by delivering written notice to the County exercising such Option to extend the Term prior to then-scheduled expiration of the Term.

**Section 2.3 Lessee Termination Right.** Lessee shall have the right to terminate this Lease at any time during the Term, with or without cause, upon not less than three (3) months prior written notice to

the County (the "**Termination Notice**"), provided that Lessee pays the County three (3) months' Rent as a termination fee and without any refund of Rent paid to date.

**Section 2.4     County Termination Right.** Notwithstanding the terms provided in Articles XI and XIII, County shall have the right to terminate, without cause, in the event (a) the Federal Aviation Administration ("FAA") does not within two (2) years of the Effective Date approve the land use change for Lessee's proposed use of the Leased Property and the National Environmental Policy Act ("NEPA") Environmental Assessment Document, in each case if and to the extent required by applicable FAA laws, rules or regulations or (b) in the event that Lessee does not perform within the five (5) year period pursuant to Article V.

### **ARTICLE III** **RENT**

**Section 3.1     Base Rent.** Commencing upon the Effective Date of this Lease, Lessee shall pay to the County the base rent ("**Rent**") in the amount of Two Hundred Seventy Dollars (\$270) per gross acre per year of the Leased Property due quarterly during the Term of this Lease. Gross acre shall include the total number of acres used, reserved for mitigation or designated as avoidance areas. The quarterly Rent amount is calculated by multiplying the per gross acre amount times the number of acres leased divided by 4. For example, \$270 per gross acre  $\times$  100 acres  $\div$  4 = \$6,750 each quarter. The Rent is due in advance on or before the first day of the first month of each calendar quarter during the Term of this Lease and shall be considered delinquent, if not paid by the fifteenth (15<sup>th</sup>) of such month. If the Rent becomes delinquent, Lessee will be charged a late fee equivalent to ten percent (10%) of the delinquent rental amount, exclusive of late fees, for each month that Rent is delinquent. Lessee may pre-pay any Rent due during the Term.

**Section 3.2     Base Rent Adjustment.**

(a) On each anniversary of the Effective Date, the Rent shall increase by two and one-half (2½%) above the Rent from the prior year.

(b) After the fifth (5th) anniversary of the Effective Date and at five (5) year intervals thereafter (but not more frequently than once every five (5) years), County has the right, but not the obligation, at its sole cost to have an third party appraisal ("**Leased Property Appraisal**") prepared by an appraiser licensed in the State of California with not less than fifteen (15) years of experience appraising raw land in Riverside County to determine the fair market value of the Leased Property. Each such Leased Property Appraisal shall be completed, if at all, by not later than the date that is nine (9) months prior to each five (5) year anniversary of the Effective Date, and, subject to the terms of this Section 3.2(b), any Rent increase resulting therefrom shall go into effect on the following five (5) year anniversary of the Effective Date. The Leased Property Appraisal will be determined without taking into account the existence of this Lease and assuming that there are no improvements on the Leased Property (*i.e.*, the Leased Property as unimproved and unoccupied raw land) and that the Leased Property is only permitted for Airport use. Rent shall increase to the greater of (i) the Rent from the prior year increased by two and one-half (2½ %); or (ii) seven percent (7%) of the fair market value of the Leased Property as set forth in the Leased Property Appraisal. In no event shall application of this paragraph result in a monthly Rent for the Leased Property which is (a) lower than the highest previous Rent for the Lease Property, or (b) greater than one hundred ten percent (110%) of the Rent during the prior year of the Term.

## **ARTICLE IV**

### **PROPERTY TAXES, UTILITIES; DEVELOPMENT EASEMENTS**

**Section 4.1     Property Tax.** The Blythe Airport is owned by the County and is not subject to any real estate taxes or assessments because the County is a governmental agency. However, Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and Lessee shall pay any such property taxes.

**Section 4.2     Utilities.** Lessee shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Leased Property and the Improvements, and all water rents, sewer service charges, or other similar charges levied or charged against, or in connection with, the Leased Property and the Improvements.

**Section 4.3     Development Easements.** Lessee may determine it is necessary, desirable, or required that, in order to construct, operate, own and/or finance Lessee's Facility (as hereinafter defined) and/or serve the Leased Property (and Lessee's project thereon), streets, water pipelines, sewer, drainage, gas or power lines, and other easements, dedications and similar rights be granted or dedicated over or within portions of other property owned by the County for the benefit of the Leased Property (the "**Development Easements**"). The County will reasonably cooperate with Lessee by granting Lessee such Development Easements provided that (a) any Development Easements shall be in a location reasonably acceptable to the County, (b) Lessee pays all of the County's reasonable out of pocket costs in connection with the same (*i.e.*, third party consultant, escrow and recording fees), (c) the County has no cost or liability in connection with the same, (d) Lessee pays reasonable compensation to the County for such Development Easements (at a per acre price equal to the per acre Rent value set forth in Article III hereto), and (e) Lessee obtains all the necessary permits, entitlements and approvals for Lessee's installation of any improvements on granted Development Easements. The County shall, on request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term, in accordance with this paragraph.

## **ARTICLE V**

### **IMPROVEMENTS**

**Section 5.1     Lessee's Facility.** Without limitation upon the other provisions of this Article 5, and subject to Lessee obtaining all entitlements and permits required by applicable law, the County agrees that Lessee, at Lessee's sole cost and expense, shall construct, own, operate, maintain, replace, repower and improve upon the Leased Property one or more photovoltaic electrical generating facilities together with related improvements, appurtenances, streets, sidewalks and facilities (together, "**Lessee's Facility**") within five years after the Effective Date subject to Force Majeure (as defined below). In the event that Lessee has not completed construction of and is operating Lessee's Facility by the date that is five (5) years after the Effective Date, subject to Force Majeure, then the County shall have the right as its sole remedy to terminate this Lease upon not less than ninety (90) days written notice to Lessee, whereupon this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

**Section 5.2     Construction of Improvements.** Lessee shall, at its sole cost, risk and expense, construct Improvements (as hereinafter defined) upon the Leased Property (including, without limitation, Lessee's Facility) in accordance with all applicable laws (including, but not limited to, the California Environmental Quality Act ("**CEQA**"), the National Environmental Protection Act ("**NEPA**") if applicable, and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority as may be reasonably necessary for the same, and otherwise in the following manner:

(a) Lessee shall submit a development plan for the entire proposed development to the appropriate Governmental Authority and construct the development in accordance to the agreed upon schedule. Such Improvement, and any other improvements, alterations and installation of fixtures, to be undertaken by Lessee shall have the prior written approval of County after Lessee has submitted to County proposed plot and building plans and specifications therefor in writing. Upon such approval, Lessee shall complete such improvements in strict compliance with said plans and specifications. Lessee shall not be permitted to complete improvements of any kind in any environmentally sensitive areas or avoidance areas, in each case as designated by applicable law, of the Leased Property and such limitation does not operate to abate or adjust the acreage leased or the Rent for the Leased Property.

(b) Prior to commencement of construction of the Improvements, Lessee shall designate in writing to the County an individual that will be involved in such construction and who has the authority to bind Lessee in connection with such construction (the "**Lessee's Designated Representative**"). The County shall within a reasonable amount of time after receipt of such notice from Lessee designate an individual who has authority to bind the County with regards to the construction of the Improvements (the "**County's Designated Representative**"; and together with the Lessee's Designated Representative, the "**Designated Representatives**").

(c) The Designated Representatives shall meet from time to time, as often as necessary, in order to coordinate the construction of the Improvements so as to reduce disturbance to the County's use of the balance of the Blythe Airport during such construction. Such coordination may include, among other things, scheduling for delivery of equipment and materials, providing staging areas for construction, storage of equipment and materials, and use of access routes on the Leased Property.

(d) Lessee shall repair all damage to Blythe Airport or any of the County's property, including but not limited to, personal property or improvements made by the County ("**County Personal Property**") (not including the Leased Property or any other property leased by Lessee from the County) caused by Lessee during the construction of the Improvements; *provided, however, that* Lessee's repair obligation shall not extend to or include any damage arising from or related to (i) conditions in, on, under or about any of the County Personal Property, the Leased Property or Blythe Airport that existed prior to the commencement of such construction or were not otherwise caused or introduced by Lessee, (ii) Lessee's discovery of such existing conditions on the Blythe Airport or County Personal Property, (iii) negligence or willful misconduct of the County, or (iv) any violation of applicable law or this Agreement by the County.

(e) Lessee complies with applicable Regulations (as hereinafter defined) relating to the Blythe Airport in connection with such construction.

(f) It is specifically acknowledged that Lessee intends to, as part of its development plan, construct Improvements located upon the Leased Property and upon adjoining parcels of real estate in which Lessee has ownership, leasehold or other interests so long as such Improvements are constructed in accordance with any applicable laws. As used hereafter, the term "**Improvements**" means any buildings, structures, transmission lines or other improvements located at any time upon the Leased Property (including, without limitation, the Lessee's Facility). The Improvements, and any fixtures, equipment or other property placed on the Leased Property by Lessee shall be the sole and exclusive property of Lessee and the County waives any and all lien rights it may have in the foregoing.

**Section 5.3 Alterations.** At any time and from time to time during the Term, Lessee may perform such minor alteration, maintenance, renovation, repair, refurbishment, replacement, repowering, removal, and other work with regard to any Improvements as Lessee may elect provided that Lessee complies with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any

applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. Minor alterations shall mean any physical modification to a structure that is limited in scope or has a minor visual impact in relation to the total design of the project. Minor alterations normally include such changes as replacement of the type of solar panels as was provided in the approved plans. If any such work is not related to Lessee's Facility or is a "**Substantial Alteration**", then Lessee shall be required to obtain the consent of the County for such Improvements and (2) comply with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. "Substantial Alteration" shall mean any physical modification to a structure that involves a major portion of the structure or has a substantial visual impact on the structure or its surroundings. Substantial Alterations normally include such changes as a replacement of solar panels that is a change in technology type or a type not approved by the plans.

**Section 5.4      Liens.** Lessee shall have no right, authority, or power to bind the County or any interest of the County in the Leased Property for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render the County's interest in the Leased Property liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of the County in the construction, erection, or operation of any such Improvements. Lessee shall give to the County not less than twenty (20) days written notice prior to the commencement of any construction in or to the Leased Property, and the County shall have the right to post notices of non-responsibility in or on the Leased Property as provided by law. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Leased Property shall be filed, Lessee shall promptly pay or bond such liens to the County's reasonable satisfaction or otherwise obtain the release or discharge thereof.

**Section 5.5      Removal of Property.** Title to and ownership of all Improvements constructed by, on behalf of, or at the direction of Lessee shall be and remain in Lessee. Upon expiration or termination of this Lease, Lessee shall surrender the Leased Property. Unless otherwise agreed to in writing by the County, Lessee shall remove, at its own expense, any and all of Lessee's fixtures, machinery, equipment, furniture, furnishings and/or movable personal property installed in or on the Leased Property and/or the Improvements not later than one hundred eighty (180) days following the expiration of the Term, or earlier termination thereof. Lessee shall repair any damage caused by Lessee to the Leased Property to the extent reasonably practicable and leave the Property in a good, safe and clean condition with all materials from the Improvements properly removed from the Blythe Airport. In the event that Lessee does not remove such Improvements, then as the County's sole remedy, they shall become the property of the County for no consideration of any kind, and Lessee shall execute any documents that may be required or necessitated conveying its interest in such improvements, alterations, and fixtures to County.

**Section 5.6      Compliance with CEQA and NEPA.**

(a) The County and Lessee will comply with the requirements of the CEQA and NEPA. Lessee will apply for all applicable Governmental Authorities (including the County) for all necessary permits and licenses for its project on the Leased Property.

(b) Lessee understands that the proposed development of Lessee's Facility is subject to development approvals yet to be obtained and the review and approval of the project in accordance with the CEQA and, if applicable, NEPA. It is expressly understood by the parties hereto that the County makes no representations or warranties with respect to approvals required by any governmental entity, including the County, or with respect to any approvals hereinafter required from the County or other Governmental

Authorities, with the County reserving full police power authority over the proposed facility. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within a particular time or with or without any conditions which require mitigation for any impacts the construction and operation of the facility comply with the terms and conditions might have.

## **ARTICLE VI**

### **USE, CONDITIONS ON USE, MAINTENANCE, AND REPAIRS**

**Section 6.1     Use.** Subject to the terms and provisions hereof, Lessee shall have the right to use and possess the Leased Property for the development, construction, operation, ownership, maintenance, replacement, repower, power storage, improvement and removal of one or more photovoltaic electrical generating facilities, any ancillary uses and no other uses without the prior consent of the County.

**Section 6.2     Conditions on Use.**

(a) Lessee's use of the Leased Property is subject to the following: (1) Minimum Standards for Fixed Base Operators attached hereto as Exhibit "C", (2) Federally Required Lease Provisions attached hereto as Exhibit "D", (3) the Storm Water Pollution Prevention Plan described on Exhibit "E", (4) FAA Airport Compliance Requirements attached hereto as Exhibit "F", and (5) the retention by the County of an Avigation Easement in the form attached hereto as Exhibit "G".

(b) Lessee shall not use or store any flammable or polluting substance (other than small amounts of oil in proper containers) on the Blythe Airport except with the express written consent of the County. The use of combustible chemicals, cleaning solvents, paint stripper, painting or welding on Blythe Airport is strictly prohibited except as may be authorized in writing by the County.

(c) Unless authorized to enter onto the Blythe Airport's aircraft movement area by the County's issuing a gate card, all motor vehicles and trailers occupying the Blythe Airport because of Lessee's use of the Leased Property must be parked in public parking lots designated by the County, display current license tags and meet any and all California environmental and insurance requirements. Lessee must ensure the safe operation of its vehicles or trailers while on the Blythe Airport. Aircraft always have the right-of-way on Blythe Airport. Vehicles of Lessee will not enter any aircraft operations area of the Blythe Airport. Conditions may arise where it may be required under applicable law for the County to withdraw, temporarily or permanently, without prior notice, the privilege of parking motor vehicles in any assigned area on the Blythe Airport.

(d) Lessee shall not exercise the rights granted herein in any manner, which would interfere with the departure or arrival of aircraft at the Blythe Airport.

(f) Lessee agrees to and shall, at Lessee's sole expense, promptly comply with all statutes, ordinances, resolutions, rules, and regulations of any applicable Federal, State or local agencies, the covenants and restrictions of this Lease, any and all directives concerning airport operations and flight safety issued by the County, and requirements of any applicable fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in law or policy from that now existing, during the Term or any part of the Term hereof relating in any manner to the occupation or use by the Lessee of the Leased Property.

(g) Lessee understands and agrees that it is subject to severe restrictions on its activities at the Blythe Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to use the Leased Property for lawful uses only.

(h) Lessee, in utilizing the Leased Property, shall not discriminate against any person or class of persons by reason of race, color, creed, sex or national origin and shall be bound by the provisions of Part 15 of the Federal Aviation Regulations and any amendments thereto which are incorporated by reference as if set forth herein in full.

(i) Other than safety materials, informative materials or public warnings relating to Lessee's Facility or the Improvements, Lessee shall not erect, maintain or display any signs or other forms of advertising upon the Leased Property without first obtaining the written approval of the County, which approval shall not be unreasonably withheld.

(j) Secure, at Lessee's expense, all necessary permits and licenses as it may be required to obtain the same, and pay for all fees and taxes levied against Lessee or required to be paid by Lessee by any authorized public entity. Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

### **Section 6.3     The County's Reserved Rights.**

(a) The Leased Property is accepted by Lessee subject to any and all existing record easements or other record encumbrances. Subject to (i) the requirements in Section 7 of the Option Agreement and (ii) the County's compliance with applicable laws and Lessee's rules and standards relating to the siting, operations and safety of Lessee's Facility and the Improvements, County shall have the right to enter upon the Leased Property and to install, lay, construct, maintain, repair, monitor and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, wells, oil and gas pipeline, and telephone and telegraph power lines and such other facilities and appurtenances necessary or convenient to use in connection therewith, over, in, upon, through, across and along the Leased Property or any part hereof so long as it does not unreasonably interfere with Lessee's use of the Leased Property. Lessee shall provide its rules and standards relating to the siting, operations and safety prior to any such entry by the County, its representatives or agents. Such rules and standards shall be reasonable and County shall have the right to provide input on Lessee's rules and standards. Lessee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring. County also reserves the right to grant franchises, easements, rights of way and permits in, over and upon, along or across any and all portions of said Leased Property as County may elect; provided, however, that no right of the County provided for in this Section 6.3 shall be so executed as to interfere unreasonably with Lessee's use hereunder, or impair the security or rights of any secured creditor or financier of Lessee. County shall cause the surface of the Leased Property to be restored to its original condition (as they existed prior to any such entry) upon the completion of any construction by County or its agents. In the event that such construction may adversely affect any of Lessee's Improvements or operations made upon the Leased Property, County shall meet and discuss the proposed construction so that the Parties may come to an agreed upon resolution. County will provide thirty (30) days advance written notice to Lessee before County exercises any of County's rights set forth in this Section 6.3; provided, however, in the event such right must be exercised by reason of emergency, then County shall give Lessee such notice as soon as is reasonably practicable under the existing circumstances.

(b) The County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as it deems appropriate provided such development or improvements do not unreasonably interfere with Lessee's Facility, including, but not limited to, blocking or impairing the access (whether direct or indirect) to sunlight. The County reserves the right to take any action it reasonably considers necessary to protect the aerial approaches of the Blythe Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other

structure on the Blythe Airport, which in the reasonable opinion of the County, would constitute a hazard to aircraft. The foregoing rights of the County shall not adversely affect the Improvements or Lessee's rights under this Lease.

(c) During the time of war or national emergency, the County shall have the right, if mandated by the United States Government, to lease the landing area of the Blythe Airport, or any part thereof, to the United States Government for military use and, if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of such lease to the Government, shall be suspended. In that event, a just and proportionate part of the Rent hereunder shall be abated, and the period of such closure shall be added to the term of this Lease, or any extensions thereof, so as to extend and postpone the expiration thereof unless Lessee otherwise elects to terminate this Lease.

(d) Notwithstanding any provisions herein, this Lease shall be subordinate to the provisions of any existing agreement between the County and the United States, relative to the operation or maintenance of the Blythe Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure of reimbursement to the County of Federal funds for the development of said airport. A list of such agreements is attached hereto as Schedule 6.3, and the County represents and warrants that true and complete copies of such agreements have been provided by the County to Lessee.

#### **Section 6.4     Maintenance and Repairs.**

(a) The County shall have no obligation to maintain or repair the Leased Property and Improvements. Lessee shall have no obligation to exercise control over, maintain, repair or protect any improvements or property placed on, under or above the Leased Property or Blythe Airport other than those improvements or property that are owned by Lessee.

(b) Lessee shall maintain the Leased Property and the Improvements to be constructed thereon by or on behalf of Lessee in a neat, safe, orderly and attractive condition during the Term of this Lease, and Lessee shall provide for the sanitary handling and disposal of all refuse accumulated as a result of Lessee use of the Leased Property and the Improvements thereon. In addition, the exterior and the interior of the Improvements (to be constructed upon) on the Leased Property shall be maintained by Lessee(s) in good working condition and repair during the Term of this Lease. If and to the extent that any improvements and/or property are placed on the Leased Property as a result of the County's exercise of its rights under Section 6.3, the County shall maintain and keep in good order (or caused to be maintained and kept in good order) such improvements and/or property, and will do so in a manner that does not unreasonably interfere with Lessee's use of the Leased Property.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.4 OR ELSEWHERE IN THIS LEASE, LESSEE SHALL HAVE NO RESPONSIBILITY FOR, OR LIABILITY OR OBLIGATION WITH RESPECT TO, THE ENVIRONMENTAL CONDITION OF, ON OR UNDER THE LEASED PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF HAZARDOUS OR CONTROLLED SUBSTANCES) EXCEPT SOLELY TO THE EXTENT CAUSED, CREATED OR EXACERBATED BY LESSEE.

**Section 6.5     No Waste.** Lessee shall not use or permit the use of the Leased Property in any manner that will tend to create waste or a private or public nuisance. Without limiting the foregoing, Lessee shall not use steer manure or other malodorous fertilizers without the prior written permission of the County.



## ARTICLE VII

### INSURANCE AND INDEMNITY

**Section 7.1 Insurance.** Without limiting or diminishing the Lessee's obligation to indemnify or hold the County harmless as provided in this Lease, Lessee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's, in the amounts of not less than that specified herein or in minimum amounts as may be subsequently uniformly by the County to all lessees at the Blythe Airport in the exercise of the County's reasonable commercial business judgment and consistent with airport industry practice for similar kinds of activities, during the Term. These requirements, with the approval of the County's Risk Manager, may be modified to reflect the activities associated with the Lessee provided that any changes are reasonable in nature and consistent with industry standards. Lessee shall have, or cause to have, all insurance required under this Lease, in place within thirty (30) days after the date of commencement of the Term.

**Section 7.2 Workers' Compensation.** If the Lessee has employees as defined by the State of California, the Lessee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County, which waiver can be provided by blanket endorsement.

**Section 7.3 Leased Property; Commercial General Liability.** Lessee shall maintain Commercial General Liability insurance coverage, with an endorsement modifying the policy to delete the aircraft exclusion as it relates to the Lessee's occupancy, operation, maintenance or use of the Blythe Airport Property, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Lessee's performance of its obligations hereunder. Policy shall include the County as an additional insured. Policy limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit.

**Section 7.4 Vehicle Liability.** If vehicles or mobile equipment are used in the performance of Lessee's obligations under this Lease, then Lessee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit. Policy shall include the County as an additional insured.

**Section 7.5 Excess Liability.** Lessee shall maintain \$10,000,000 of Excess Liability coverage that will respond excess of the scheduled underlying Commercial General Liability and Vehicle Liability policies, with coverage that is no less broad than the underlying policies. County shall be an additional insured under said policy, pursuant to policy wording which defines an Insured to include any person or organization that the Named Insured has agreed to provide insurance to, in writing, prior to the occurrence of the loss.

**Section 7.6     Course of Construction Insurance.** During the full term of construction of the planned Improvements, Lessee shall purchase and maintain or cause to be purchased and maintained All Risk Builder's Risk insurance (Completed Value Form). The Course of Construction coverage limit of insurance shall equal or exceed the highest values exposed to loss at any one time during the Project term. Policy shall include the County as an additional insured, to the extent of its interest.

**Section 7.7     Real and Personal Property Insurance.** All-Risk real and personal insurance coverage for the full replacement cost value of building, structures, fixtures, equipment, improvements/alterations and systems on the premises for property that the Lessee owns or is contractually responsible for. Policy shall provide a Waiver of Subrogation in favor of each Landlord Party. Policy shall include business interruption, extra expense, and expediting expense to cover the actual loss of business income sustained during the restoration period.

**Section 7.8     General Insurance Provisions - All lines.**

(a) All insurance maintained in accordance with the provisions of Sections 7.1 through 7.6 shall be issued by creditworthy and commercially reasonable licensed companies, shall be carried in the name of the Lessee, with County as additional insured, but only to the extent of its interest. The additional insured status can be provided through the use of blanket additional insured endorsements.

(b) It is understood and agreed to by the parties hereto that the Lessee's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(c) Lessee shall require all contractors and subcontractors used on the Leased Property to maintain reasonable types and amounts of insurance. Lessee shall also require that the contractors and subcontractors to waive subrogation for workers' compensation insurance and include the County as additional insureds thereunder.

(d) Lessee shall not commence operations until the County has been furnished original Certificates of Insurance as well as the insurance endorsements and policy wordings, as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the Certificate of Insurance.

(e) If during the Term of this Lease or any extension thereof, there is a material change in the scope of use of the Leased Property, the County reserves the right to reasonably adjust the types of insurance required under this Lease and the monetary limits of liability for the insurance coverages currently required herein, if, upon advice of the County's Risk Manager, the amount or type of insurance carried by the Lessee has become inadequate.

(f) Lessee agrees to notify the County of any claim by a third party or any incident or event that may give rise to a claim arising from this Lease.

## **Section 7.9      Indemnity.**

(a) Lessee shall hereby release, indemnify and hold harmless the County, its successors, assigns, legal representatives, officers, directors, employees, agents, representatives agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, and elected and appointed officials ("**Indemnified Parties**") from all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, costs and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity, any liability whatsoever (collectively, "**Losses**"), based upon (i) the use, occupancy or presence of Lessee, its employees, members, agents, representatives, contractors, subcontractors in, on, or about the Leased Property; (ii) the performance, or failure to perform by the Lessee, its employees, members, agents, representatives, contractors, subcontractors, its work or any obligation under this Lease; (iii) any act or omission of Lessee, its officers, employees, subcontractors, agents or representatives directly or indirectly arising out of or in any way relating to or in any way connected with the Leased Premises or this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Lessee shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnified Parties in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Lessee, Lessee shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the County; *provided, however, that* any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Lessee's indemnification to Indemnified Parties as set forth herein.

Lessee's obligation hereunder shall be satisfied when Lessee has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved.

The specified insurance limits required in this Lease shall in no way limit or circumscribe Lessee's obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Lessee from indemnifying the Indemnified Parties to the fullest extent allowed by law.

Lessee shall require each contractor of every tier to indemnify the County of Riverside in respects to any claims arising from their contract.

Notwithstanding anything to the contrary in this Lease, Lessee shall have no obligation to indemnify, defend or hold any Indemnified Party harmless from or against any Losses to the extent of the negligence, willful misconduct, violation of law or breach of this Agreement by any Indemnified Party.

(b) The County shall indemnify, defend and hold harmless Lessee, its parents, affiliates, subsidiaries and each of their respective officers, directors, managers, members,

partners, employees, agents, contractors and consultants from any Losses whatsoever based or asserted upon (i) any services, or activities of, or permitted by, any Indemnified Party on the Blythe Airport, Leased Property or Lessee's Facility, and (ii) the performance, or failure to perform by any Indemnified Party of any right or obligation of the County under this Lease. Such Losses may include, but are not limited to, property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Notwithstanding anything to the contrary in this Lease, the County shall have no obligation to indemnify Lessee to the extent of Lessee's, its officers, agents, employees, contractors, subcontractors agents or representatives sole negligence, willful misconduct, violation of law or breach of this Agreement.

**Section 7.10 Subrogation.** Anything in this Lease to the contrary notwithstanding, the County and Lessee each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of casualty insurance or worker's compensation insurance that Lessee is required to provide hereunder, or under any policies of insurance maintained by the County, to the extent, and only to the extent, of any proceeds actually received by the County or Lessee, respectively, with respect thereto, regardless of cause or origin, including the negligence of either party hereto, its agents, contractors, invitees or licensees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**Section 7.11 Coverage.** All insurance described in this Article 7 may be obtained by Lessee by endorsement or equivalent means under any blanket insurance policies maintained by Lessee, provided that the coverage and other terms of such insurance otherwise comply with this Article 7.

## **ARTICLE VIII CASUALTY LOSS**

**Section 8.1 Lessee's Obligation to Restore.** Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, Lessee may (at Lessee's discretion) repair, replace, remove, restore, reconstruct, improve, modify and/or expand the same; *provided, however, that* Lessee shall make its decision with respect to the foregoing not later than one (1) year after the event of casualty by written notice to the County, and shall thereafter diligently pursue the completion of the same.

**Section 8.2** In the event that Lessee chooses to remove the Improvements, the Leased Property shall be restored to a good, safe and clean condition and all materials from the Improvements properly removed from the Blythe Airport and in accordance with Section 5.5.

## **ARTICLE IX CONDEMNATION**

**Section 9.1 Statement of Intent.** The parties represent and warrant that it is their intention that neither the Leased Property, Improvements, nor any portion thereof, shall be subject to a condemnation action or proceeding at anytime during the Term. However, the balance of the provisions of this Article 9 apply in the event that circumstances affecting the Leased Property substantially change in the future to the extent that a condemnation action or proceeding affecting the Leased Property becomes necessary.

**Section 9.2     Total Taking.** Should the entire Leased Property or Improvements be taken (which term, as used in this Article 9, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (a) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (b) next, the balance of the award shall be equitably apportioned between the County and Lessee based on the then respective fair market values of the County's interest in the Leased Property (appraised by reference to all relevant factors including the then present value of the County's reversionary interest in the entire Leased Property after expiration of the Term) and Lessee's interest in the Leased Property and the Improvements (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Leased Property and Improvements for the remainder of the Term). After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate.

**Section 9.3     Partial Taking.** Should a portion of the Leased Property or Improvements be taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall nevertheless continue in effect as to the remainder of the Leased Property or Improvements unless, in Lessee's good faith judgment, so much of the Leased Property or Improvements shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Property and Improvements had thus been taken, and the award therefor shall be distributed as provided in Section 9.2.

**Section 9.4     Award on Partial Taking; Rent Reduction.** In the event of a partial taking where this Lease is not terminated, and as a result thereof Lessee will need to restore, repair, or refurbish the remainder of the Leased Property and the Improvements in order to put them in a useable condition, then the award shall first be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property and the Improvements taken. If a portion of the Leased Property or the Improvements is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property taken. In the event of a partial taking where this Lease is not terminated, the Rent shall be proportionately reduced, as of the date of such taking, for the remainder of the Term based on the number of acres of the Leased Property which were taken.

**Section 9.5     Temporary Taking.** If the whole or any portion of the Leased Property or the Improvements shall be taken for temporary use or occupancy, the Term shall not be reduced or affected. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. Rent shall continue to be paid during the temporary taking. In the event of any temporary taking, Lessee shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to the County therefrom for the estimated cost of restoration of the Leased Property and the Improvements to the extent that any such award is intended to compensate for damage to the Leased Property and the Improvements, shall be apportioned between the County and Lessee as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. In the event that the County receives an award for the estimated cost of restoration of the Leased Property, then Lessee shall be relieved from its obligations to restore the Leased Property.

**Section 9.6 Parties to Condemnation Proceeding.** Lessee, if it so desires, shall be made a party to any condemnation proceeding.

**Section 9.7 Notice of Taking, Cooperation.** Lessee and the County shall immediately notify each other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Leased Property or the Improvements of which Lessee or the County (as the case may be) has actual knowledge. The County and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **ARTICLE X SUBLETTING AND ASSIGNMENT**

**Section 10.1 Prohibition.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, neither Lessee nor any trustee, receiver or other successor to Lessee shall, either voluntarily or by operation of law, assign sell, encumber, pledge or otherwise transfer all or any part of Lessee's leasehold estate hereunder, or permit the Leased Property to be occupied by anyone other than Lessee or Lessee's employees, contractors, or sublet the leasehold estate or any portion thereof, without the County's prior written consent in each instance.

**Section 10.2. Consent Mandatory.** The consent of the County shall be mandatory if the assignment is, in whole or in part to (collectively, "**Mandatory Consent Transactions**"): (i) any other party or entity that is controlled by, under common control with or that controls Lessee, (ii) in connection with the sale or all or substantially all of the assets of Lessee, (iii) in connection with any financing (including, but not limited to, construction and permanent financings and refinancings), funding or sale-leaseback transactions. In connection with any Mandatory Consent Transaction, Lessee shall provide the County with written notice of such transaction on the form of Consent to Mandatory Consent Transaction in the form attached hereto as Exhibit "H" (the "**Form of Mandatory Consent**") and the County shall deliver to Lessee the County's written acknowledgement of the same within sixty (60) calendar days of such delivery. In the event that the County does not provide to Lessee with such written acknowledgement within such 60 days, the County shall be deemed to have given its consent to the Mandatory Consent Transaction described in the Form of Mandatory Consent. If and to the extent that Lessee receives rent from any assignee or Lessee of this Lease in excess of the Rent required hereunder, then such excess shall be paid to the County.

**Section 10.3 Required Information.** In connection with requesting the County's consent to an assignment of this Lease or a subletting of the Leased Property or any portion thereof for which the County's consent is required other than with respect to a Mandatory Consent Transaction, Lessee shall submit in writing to the County: (i) the name of the proposed assignee or subtenant; (ii) the terms and provisions of the proposed sublease or assignment; and (iii) such reasonable information as the County may request concerning the proposed subtenant or assignee, including but not limited to a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for the County's consent, statements of income or profit and loss of the proposed subtenant or assignee for the two year period preceding the request for the County's consent and a written statement in reasonable detail as to the business experience of the proposed subtenant or assignee during the five years preceding the request for the County's consent.

**Section 10.4 The County's Options.** Subject to Section 6.2, at any time within the sixty (60) days after the County's receipt of the information specified in Section 10.3 above, the County shall by written notice to Lessee elect to (i) consent to the subletting or assignment upon the terms and to the subtenant or

assignee proposed; (ii) condition such consent upon the assumption by such assignee or Lessee of all obligations hereunder and such other reasonable conditions as the County may impose, including but not limited to adjustment of the rental payable hereunder up to the amount of any rent received by Lessee is to receive in excess of the Rent required hereunder; or (iii) refuse to give its consent. In the event that the County does not respond to Lessee in writing in such sixty (60) day period, then the County shall be deemed to have approved the proposed assignment or subletting, as applicable. Lessee and the County agree that the County shall not unreasonably withhold, condition or delay its consent to a proposed subletting or assignment. Lessee further agrees that no assignment or subletting consented to by the County shall impair or diminish any covenant, condition or obligation imposed upon Lessee by this Lease or any right, remedy or benefit afforded the County by this Lease.

**Section 10.5 Manner of Notifying the County.** If the County consents to such assignment or subletting, Lessee may thereafter within ninety (90) days after the expiration of said sixty (60) day period enter into a valid assignment or sublease of the premises or portion thereof, upon the terms and conditions described in the information required to be furnished by Lessee to the County pursuant to Section 10.3 above or other terms not less favorable to Lessee, provided however, that any material change in the terms of such subletting or assignment from those approved by the County shall be subject to the County's consent as provided herein.

**Section 10.6 Invalidity.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, no transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, or otherwise, other than pursuant to a foreclosure as defined in this Lease shall be valid or effective without such prior written consent and approval.

## **ARTICLE XI** **LESSEE'S FINANCING**

**Section 11.1 Lessee's Right to Encumber.** Lessee may, without the County's consent or joinder, encumber its interest in this Lease and the leasehold estate hereby created with one or more deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Lessee or Lessee's affiliates. Any such mortgages, deeds of trust, and/or other lien instruments, and the indebtedness secured thereby, provided that the County has been given notice thereof as set forth in Section 14.1, are herein referred to as "**Permitted Mortgages**," and the holder or other beneficiary thereof are herein referred to as "**Permitted Mortgagees**." No lien of Lessee upon its interest in this Lease and the leasehold estate hereby created shall encumber or affect in any way the interest of the County hereunder or in and to the Leased Property, except insofar as the County is obligated to take certain actions as to Permitted Mortgagees as provided in this Article XI. The Improvements and the leasehold estate created hereby shall at all times remain separate and apart from the title to the Leased Property for all purposes relating to the interests of any mortgagees of the County and Lessee.

**Section 11.2 Mortgagee Protective Provisions.** If Lessee encumbers its interest in this Lease and the leasehold estate hereby created with liens as above provided, then Lessee shall notify the County thereof, providing with such notice the name and mailing address of the Permitted Mortgagee in question, the County shall, upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) The County shall give to the Permitted Mortgagee a duplicate copy of any and all notices which the County gives to Lessee pursuant to the terms hereof, including notices of default, and no such notice shall be effective until such duplicate copy is actually received by such Permitted Mortgagee, in the manner provided in Section 14.1.

(b) There shall be no cancellation, surrender, or modification of this Lease by joint action of the County and Lessee without the prior written consent of the Permitted Mortgagee.

(c) In the event of a Default (as hereinafter defined) should occur hereunder, then the County specifically agrees that:

(1) The County shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Lease or Lessee's right to possession hereunder, until a notice specifying the Default and the event giving rise to such Default has been received by the Permitted Mortgagee, in the manner provided in Section 14.1, and if the Permitted Mortgagee proceeds to cure the Default within a period of 30 days after the later of receipt of such notice or the occurrence of such Default, as to events of Default which Permitted Mortgagee cannot reasonably cure within such time period, the Permitted Mortgagee, to the extent it is reasonably able to do so, commences curing such Default within such time period and thereafter diligently pursues such cure to completion, then any payments made and all things done by the Permitted Mortgagee to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by the County as if done by Lessee;

(2) if the Default is a nonmonetary default that a Permitted Mortgagee cannot reasonably cure without being in possession of the Leased Property, then for so long as the Permitted Mortgagee is diligently attempting to secure possession of the Leased Property (whether by foreclosure or other procedures), provided the Permitted Mortgagee cures any monetary Defaults as well as any other Defaults that are reasonably susceptible of then being cured by the Permitted Mortgagee, then the County shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Leased Property in order to cure such Default, and during such time the County shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder; and

(3) if the Default is a non monetary default of such a nature that it is not reasonably susceptible of being cured by the Permitted Mortgagee, then the County shall not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Permitted Mortgagee pays all Rent then due and thereafter keeps the monetary obligations of Lessee hereunder current and complies with those other provisions of this Lease which, by their nature, Permitted Mortgagee may then reasonably comply with.

(d) Should this Lease be terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to the County not later than 60 days after receipt from the County of written notice of such termination (which notice the County agrees to give) to elect to receive, in its own name or in the name of its nominee or assignee, a new lease of the Leased Property for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and the County agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder.

(e) No Permitted Mortgagee shall be or become liable to the County as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Lessee under this Lease or shall actually take possession of the Leased Property, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.



(f) From time to time during the Term, the County shall, within sixty (60) business days after receipt, execute and deliver to a Permitted Mortgagee, or a prospective Permitted Mortgagee, any estoppel, nondisturbance agreement, recognition agreement, consent, lien waiver or other commercially reasonable document requested by any Permitted Mortgagee or prospective Permitted Mortgagee, in each case in form and substance reasonably acceptable to the County.

**Section 11.3 Modifications.** If any prospective Permitted Mortgagee requires modifications to this Lease as a condition to granting a Permitted Mortgage, the County shall not unreasonably withhold its consent to such modifications, provided that the County shall not be required to consent to any such modification pertaining to Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease the County's rights or increase its burdens or obligations hereunder. Any out of pocket cost incurred by the County in connection with any such proposed modification shall be borne by Lessee.

## **ARTICLE XII**

### **WARRANTY OF PEACEFUL POSSESSION**

The County covenants that Lessee shall peaceably, and quietly have, hold, occupy, use and control to enjoy the Leased Property during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations; and the County agrees to defend Lessee's right to such occupancy, use, and enjoyment to the Leased Property against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof, by, through or under the County, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

## **ARTICLE XIII**

### **DEFAULT AND REMEDIES**

**Section 13.1 Default.** Each of the following shall be deemed a "Default" by Lessee hereunder and a material breach of this Lease:

(a) Whenever Lessee shall fail in the payment of Rent, or any other monies required to be paid by Lessee under the express terms of this Lease when the same are due under the terms hereof ("**Monetary Default**"), if the County shall deliver to Lessee a written notice ("**Default Notice**") specifying such Monetary Default, and if the Monetary Default as specified in the Default Notice shall continue for a period of fifteen (15) days after the date of Lessee's receipt of the Default Notice, then Lessee shall be in Default.

(b) In the event of any breach of this Lease by Lessee other than a Monetary Default ("**Other Default**"), if the County shall deliver to Lessee a Default Notice specifying such Other Default and if the Other Default so specified by the Default Notice shall not be removed or cured after a period of sixty (60) days from the date of Lessee's receipt of the Default Notice then Lessee shall be in Default; *provided, however, that as to any Other Default that Lessee cannot reasonably cure with reasonable diligence within such period, Lessee shall not be in Default if Lessee proceeds in a commercially reasonable manner to remedy the same within such sixty (60) day period.*

**Section 13.2 Remedies.** If a Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Article XI, the County may at any time thereafter prior to the curing thereof

pursue any rights and remedies available to the County hereunder, at law, in equity or otherwise (including, but not limited to, the termination of this Lease). Upon the County's election to terminate this Lease, and provided that the County has complied with the provisions of Article XI in connection with such Default, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term hereof.

#### **ARTICLE XIV** **MISCELLANEOUS**

**Section 14.1    Notices.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) facsimile transmission (followed by next day overnight delivery service) or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section 14.1. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service or if sent via registered or certified mail, (ii) upon transmission with a printed receipt from the transmitting facsimile machine in the event sent via facsimile transmission and (iii) on the next business day if sent via an overnight delivery service, if sent to each party at the address set forth below with the required proper postage:

<b>To the County:</b>	Economic Development Agency Aviation Division 3403 Tenth Street, 5 <sup>th</sup> Floor Riverside, CA 92501 Telephone: (951) 955-8916 Facsimile: (951) 698-7920
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<b>To Lessee:</b>	NRG Solar Blythe II 1015 West Hays Street Boise, Idaho 83702 Attention: Bob Mooney Telephone: 208.338.2603 Facsimile: 208.890.0369
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With a copy to:	Reed Smith LLP 1901 Avenue of the Stars, Suite 700 Los Angeles, California 90067 Attention: Stephane D. Nguyen Telephone: 310.734.5200 Facsimile: 310.734.5299
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Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth above. Notices required pursuant to the terms of this Agreement shall be delivered prior to 5 p.m. on the date such notice is due.

**Section 14.2    Modification and Non Waiver.** No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by the County of any Rent at any time or in

any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

**Section 14.3 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.

**Section 14.4 Number and Gender; Captions; References.** Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease.

**Section 14.5 Estoppel Certificate.** The County and Lessee shall execute and deliver to each other, within sixty (60) days after request therefor by the other party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably acceptable to the Landlord Parties (to the extent each of them is a party to the estoppel certificate) and Lease.

**Section 14.6 Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**Section 14.7 Attorney Fees.** For actions for the enforcement of the agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

**Section 14.8 Surrender of Leased Property; Holding Over.** Upon termination or the expiration of this Lease, Lessee shall peaceably quit, deliver up, and surrender the Leased Property and, subject to the provisions of this Agreement, the Improvements that are then located on the Leased Property. If Lessee does not surrender possession of the Leased Property and the Improvements at the end of the Term, such action shall not extend the Term, Lessee shall be a Lessee at sufferance, and during such time

of occupancy Lessee shall pay to the County, as damages, an amount equal to 125% the amount of Rent that was being paid immediately prior to the end of the Term, prorated on a daily basis. The County shall not be deemed to have accepted a surrender of the Leased Property by Lessee, or to have extended the Term, other than by execution of a written agreement specifically so stating. In addition, Lessee's obligations to restore the Leased Property shall be in accordance with Section 5.5 and Article VIII.

**Section 14.9 Relation of Parties.** It is the intention of the County and Lessee to hereby create the relationship of lessor and lessee, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make the County and Lessee partners or joint venturers or to render either party hereto liable for any obligation of the other.

**Section 14.10 Force Majeure.** As used herein "**Force Majeure**" means the occurrence of any event or circumstance (including, but not limited to, any aircraft accidents on or near the Leased Property or any restriction by a governmental authority which restricts Lessee's use of the Leased Property) which prevents or delays the performance by the County or Lessee of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Lessee shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Lessee shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Lessee:

- (a) Lessee shall give prompt written notice of such occurrence to the County; and
- (b) Lessee shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the County advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Lessee shall not be relieved by any event of Force Majeure from Lessee's obligations to pay Rent hereunder, nor shall the Term be extended thereby.

**Section 14.11 Entireties.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements (whether written or oral) with respect thereto are merged herein. Any agreements entered into between the County and Lessee of even date herewith are not, however, merged herein.

**Section 14.12 Consents and Approvals.** If and to the extent the consent, approval or similar action of any of the parties hereto is required under this Agreement or applicable law, the County and Lessee agree that such consent shall not be unreasonably withheld, conditioned or delayed.

**Section 14.13 Recordation.** The County and Lessee will, at the request of the other, promptly execute an instrument in recordable form constituting a memorandum or short form of this Lease (or any amendment hereto), which shall be filed for record in the County of Riverside, or at the request of either party this Lease shall be so filed for record. In addition, Lessee may, at its sole cost, obtain a leasehold policy of title insurance with respect to its interest in this Lease. Upon expiration or termination of this Lease, Lessee shall execute and record in the County of Riverside a release of this leasehold interest.

**Section 14.14 Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Leased Property, and, subject to the provisions hereof pertaining to Lessee's rights to assign, sublet, or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

**Section 14.15 No Third Parties Benefited.** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, right to execute a new lease, and certain other enumerated rights granted to Permitted Mortgagees, the terms and provisions of this Lease are for the sole benefit of the County and Lessee, and no third party whatsoever, is intended to benefit herefrom.

**Section 14.16 Survival.** Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

*[remainder of page intentionally left blank – signature page follows]*

**EXHIBITS:**

- Exhibit "A":** Legal Description of Leased Property
- Exhibit "B":** Depiction of Leased Property
- Exhibit "C":** Minimum Standards for Fixed Base Operators
- Exhibit "D":** Federally Required Lease Provisions
- Exhibit "E":** The Storm Water Pollution Prevention Plan
- Exhibit "F":** FAA Airport Compliance Requirements
- Exhibit "G":** Avigation Easement Form
- Exhibit "H":** Consent to Mandatory Consent Transaction Form

IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

\_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT B**

**Description of Optioned Land**

**[Attached hereto and made a part hereof]**

**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

THOSE PORTIONS OF TRACTS 2, 3, 4, 10, 11, 12, 15, 16, 17, 18 AND 19 AS DESCRIBED IN QUITCLAIM DEED RECORDED DECEMBER 14, 1948, IN BOOK 1035, PAGE 520, OFFICIAL RECORDS OF RIVERSIDE COUNTY, LYING WITHIN PORTIONS OF SECTIONS 19, 20, 30 AND 29, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT THE EAST QUARTER CORNER OF SAID SECTION 19;

**THENCE** SOUTH 89°35'40" WEST 1368.35 FEET ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 19, ALSO BEING THE SOUTH LINE OF PARCELS 32 AND 33 OF PARCEL MAP NO. 14293 AS SHOWN ON FILE IN BOOK 108 OF PARCEL MAPS, PAGE 11 THROUGH 20, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY TO A POINT LYING PARALLEL WITH AND 1368.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF SAID SOUTHEAST QUARTER;

**THENCE** SOUTH 01°41'54" EAST 2672.15 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1368.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30;

**THENCE** SOUTH 01°40'50" EAST 398.63 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 430.00 FEET SOUTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE NORTH LINE OF THE EAST HALF OF SAID SECTION 30;

**THENCE** NORTH 89°37'44" EAST 750.20 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 618.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE EAST LINE OF SAID EAST HALF;

**THENCE** SOUTH 01°40'50" EAST 3604.77 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1270.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF SAID EAST HALF;



**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**THENCE NORTH 89°15'08" EAST 638.56 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1270.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29;**

**THENCE NORTH 89°14'05" EAST 1229.68 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1250.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID SOUTHWEST QUARTER;**

**THENCE SOUTH 01°40'50" EAST 750.10 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF SAID SOUTHWEST QUARTER;**

**THENCE NORTH 89°14'05" EAST 1397.21 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29;**

**THENCE NORTH 88°44'21" EAST 1456.49 FEET ALONG SAID PARALLEL LINE TO A POINT ON THE WEST LINE OF PARCEL 9 OF PARCEL MAP NO. 14093 AS SHOWN ON FILE IN BOOK 105 OF PARCEL MAPS, PAGE 78 THROUGH 87, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY;**

**THENCE NORTH 00°59'12" WEST 2104.95 FEET ALONG SAID WEST LINE;**

**THENCE NORTH 01°39'08" WEST 2664.64 FEET ALONG SAID WEST LINE TO THE NORTHWEST CORNER OF SAID PARCEL 9, ALSO BEING A POINT ON THE SOUTHWEST CORNER OF PARCEL 8 OF SAID PARCEL MAP NO. 14093;**

**THENCE NORTH 01°45'01" WEST 2641.16 FEET ALONG THE WEST LINE OF SAID PARCEL 8 TO THE NORTHWEST CORNER THEREOF, ALSO BEING A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SECTION 20;**

**THENCE SOUTH 89°13'07" WEST 4128.40 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;**

**EXHIBIT "A"**  
**US SOLAR LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**EXCEPTING THEREFROM** THAT PORTION CONVEYED TO BALLARD JENKINS, ET AL, BY DEED RECORDED OCTOBER 1, 1959 AS INSTRUMENT NO. 84235 OF OFFICIAL RECORDS.

**ALSO EXCEPTING THEREFROM** ALL URANIUM, THORIUM AND ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (80 STAT. 763) TO BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIAL AS RESERVED BY THE UNITED STATES OF AMERICA IN INSTRUMENT RECORDED DECEMBER 14, 1984 IN BOOK 1035, PAGE 520 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA

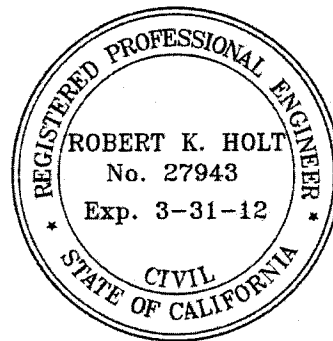
DESCRIBED PARCEL CONTAINS 828.86 ACRES.

FOR GRAPHICAL PURPOSES SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under the supervision of:

\_\_\_\_\_  
Robert K Holt, RCE 27943  
Expires 3/31/2012  
The Holt Group, Inc  
201 E Hobsonway  
Blythe, CA 92225  
(760) 922-4658

Date: \_\_\_\_\_

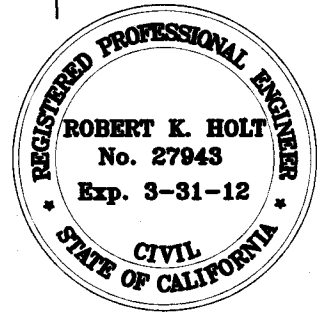
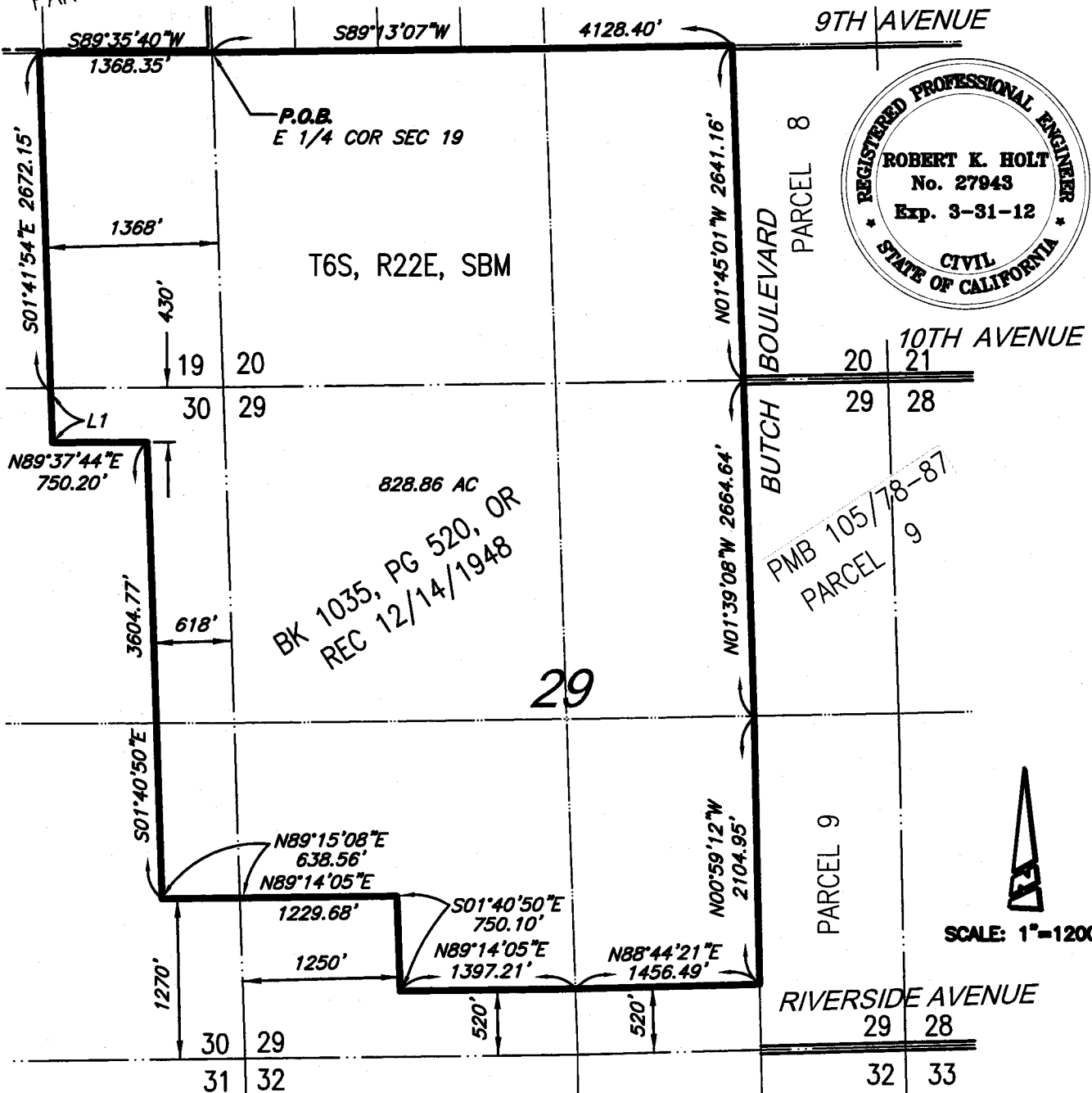


PMB 108/11-20  
PARCEL 33

# EXHIBIT "B"

US SOLAR LEASE BOUNDARY

SHEET 1 OF 1



SCALE: 1"=1200'

THG # 1088.001  
DATE: 08/24/10

**THE HOLT GROUP**

ENGINEERING, PLANNING & SURVEYING

201 E HOBSONWAY TEL (760) 922-4658  
BLYTHE, CA 92225 FAX (760) 922-4660

PREPARED UNDER  
THE SUPERVISION OF:

ROBERT K HOLT  
RCE 27943

DATE





EXHIBIT C

Form of Memorandum of Agreement

[Attached hereto and made a part hereof]

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO

Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, California 90067  
Attn: Stephane D. Nguyen

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MEMORANDUM OF AGREEMENT

By this Memorandum, the County of Riverside ("Optionor") evidences that it has granted to NRG SOLAR BLYTHE II, a Delaware limited liability company ("Optionee") the option (the "Option") to lease certain real property situated in the County of Riverside, State of California, as more particularly described on Schedule 1 attached hereto (the "Property") and made a part hereof, on terms and conditions set forth in that certain Option Agreement (the "Agreement") executed concurrently herewith between Optionor and Optionee.

The parties have executed and recorded this instrument for the purpose of imparting notice to all third parties of the Agreement.

This Memorandum and the Agreement shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns.

This Memorandum and the Agreement are governed by California law.

This Memorandum may be executed in any number of counterparts, all of which together shall constitute one instrument.

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, Optionee and Optionor have executed this Memorandum as of the date of the acknowledgements below, but to be effective first above written.

OPTIONOR:

THE COUNTY OF RIVERSIDE,  
*a political subdivision  
of the State of California*

By: Marion Ashley  
Marion Ashley, Chairman  
Board of Supervisors

ATTEST:

KECIA HARPER-IHEM, Clerk

By: [Signature]  
DEPUTY

OPTIONEE:

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: [Signature]  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL  
BY: Anita C. Willis 12-13-10  
ANITA C. WILLIS DATE

[SIGNATURE PAGE OF MEMORANDUM OF AGREEMENT (OPTION)]

DEC 14 2010 3.29



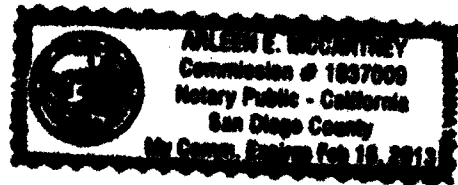
State of California )  
County of SAN DIEGO

On DECEMBER 8, 2010, before me, ALLEN E. MCCARTNEY, a notary public for said county and said state, personally appeared TIM NEMIG who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Allen E. McCartney (Seal)



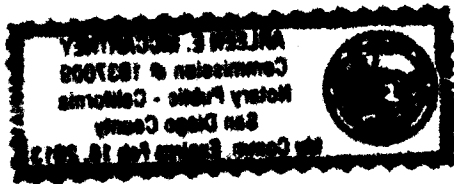
State of California )  
County of \_\_\_\_\_

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

State of California )  
County of \_\_\_\_\_)

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**Schedule 1**

**Legal Description of Property**

**[See Exhibit B to Option Agreement]**

## LEASE AGREEMENT

This LEASE AGREEMENT (this "**Lease**"), effective as of the Closing (the "**Effective Date**"), is by and between THE COUNTY OF RIVERSIDE, as lessor, a political subdivision of the State of California (the "**County**"), and NRG SOLAR BLYTHE II, a Delaware limited liability company, as lessee ("**Lessee**"), with reference to the following facts and objectives:

A. The County is the owner of record of all of that certain real property consisting of approximately 3,904 acres of land and improvements therein, (the "**Property**") situated at 17710 W. Hobsonway, Riverside County, California, more commonly known as "**Blythe Airport**".

B. The County and Lessee entered into that certain Option Agreement (the "**Option Agreement**") dated as of December \_\_, 2010, whereby Lessee has been granted the right to lease from the County portions of the Blythe Airport when and if Lessee exercises any or all of the Option described therein.

C. The County desires to lease to Lessee, and Lessee desires to lease, a portion of real property within the Blythe Airport, consisting of approximately 156 acres of land for the use and purposes provided herein.

D. For purposes of this Lease, "**Governing Authority**" means any appropriate federal, state or local agency that has jurisdiction over the matters to be reviewed and approved. Capitalized terms used, and not otherwise defined, herein shall have the same meanings ascribed to them in the Option Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the County and Lessee hereby agree as follows:

## **ARTICLE I** LEASE OF PROPERTY

**Section 1.1    Leased Property.** The County, in consideration of the Rent which Lessee hereby agrees shall be paid, does hereby lease unto Lessee, and Lessee does hereby lease from the County, the Leased Property as legally described in Exhibit "A" and as depicted on Exhibit "B", attached hereto and by this reference incorporated herein, which Leased Property shall include all of the County's rights and privileges in and to the real property comprising the Leased Property and the Appurtenant Rights. For sake of clarity, this Lease does not grant any water or mineral rights to Lessee.

## **ARTICLE II** TERM OF LEASE

**Section 2.1    Term.** Unless sooner terminated as expressly herein provided, this Lease shall continue in effect for a term commencing on the Effective Date and ending at midnight, Pacific Standard Time, on the date that is thirty (30) years after the Effective Date (the "**Initial Term**"). The Initial Term, as it may be extended in accordance with Section 2.2 below, is referenced to herein as the "**Term**".

**Section 2.2     Extension Term.** Lessee shall have four (4) options (each, an “**Option**” and collectively, the “**Options**”) to extend the Term for an additional period of five (5) years per Option (each, an “**Extension**” and collectively, the “**Extensions**”) by delivering written notice to the County exercising such Option to extend the Term prior to then-scheduled expiration of the Term.

**Section 2.3     Lessee Termination Right.** Lessee shall have the right to terminate this Lease at any time during the Term, with or without cause, upon not less than three (3) months prior written notice to the County (the “**Termination Notice**”), provided that Lessee pays the County three (3) months’ Rent as a termination fee and without any refund of Rent paid to date.

**Section 2.4     County Termination Right.** Notwithstanding the terms provided in Articles XI and XIII, County shall have the right to terminate, without cause, in the event (a) the Federal Aviation Administration (“**FAA**”) does not within two (2) years of the Effective Date approve the land use change for Lessee’s proposed use of the Leased Property and the National Environmental Policy Act (“**NEPA**”) Environmental Assessment Document, in each case if and to the extent required by applicable FAA laws, rules or regulations or (b) in the event that Lessee does not perform within the five (5) year period pursuant to Article V.

### **ARTICLE III** **RENT**

**Section 3.1     Base Rent.** Commencing upon the Effective Date of this Lease, Lessee shall pay to the County the base rent (“**Rent**”) in the amount of Two Hundred Seventy Dollars (\$270.00) per gross acre per year of the Leased Property due quarterly during the Term of this Lease. Gross acre shall include the total number of acres used, reserved for mitigation or designated as avoidance areas. The quarterly Rent amount is calculated by multiplying the per gross acre amount times the number of acres leased divided by 4. For example, \$270 per gross acre  $\times 100 \text{ acres} \div 4 = \$6,750$  each quarter. The Rent is due in advance on or before the first day of the first month of each calendar quarter during the Term of this Lease and shall be considered delinquent, if not paid by the fifteenth (15<sup>th</sup>) of such month. If the Rent becomes delinquent, Lessee will be charged a late fee equivalent to ten percent (10%) of the delinquent rental amount, exclusive of late fees, for each month that Rent is delinquent. Lessee may pre-pay any Rent due during the Term.

**Section 3.2     Base Rent Adjustment.**

(a) On each anniversary of the Effective Date, the Rent shall increase by two and one-half (2½%) above the Rent from the prior year.

(b) After the fifth (5th) anniversary of the Effective Date and at five (5) year intervals thereafter (but not more frequently than once every five (5) years), County has the right, but not the obligation, at its sole cost to have an third party appraisal (“**Leased Property Appraisal**”) prepared by an appraiser licensed in the State of California with not less than fifteen (15) years of experience appraising raw land in Riverside County to determine the fair market value of the Leased Property. Each such Leased Property Appraisal shall be completed, if at all, by not later than the date that is nine (9) months prior to each five (5) year anniversary of the Effective Date, and, subject to the terms of this Section 3.2(b), any Rent increase resulting therefrom shall go into effect on the

following five (5) year anniversary of the Effective Date. The Leased Property Appraisal will be determined without taking into account the existence of this Lease and assuming that there are no improvements on the Leased Property (*i.e.*, the Leased Property as unimproved and unoccupied raw land) and that the Leased Property is only permitted for Airport use. Rent shall increase to the greater of (i) the Rent from the prior year increased by two and one-half (2½ %); or (ii) seven percent (7%) of the fair market value of the Leased Property as set forth in the Leased Property Appraisal. In no event shall application of this paragraph result in a monthly Rent for the Leased Property which is (a) lower than the highest previous Rent for the Lease Property, or (b) greater than one hundred ten percent (110%) of the Rent during the prior year of the Term.

#### **ARTICLE IV**

#### **PROPERTY TAXES, UTILITIES; DEVELOPMENT EASEMENTS**

**Section 4.1     Property Tax.** The Blythe Airport is owned by the County and is not subject to any real estate taxes or assessments because the County is a governmental agency. However, Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and Lessee shall pay any such property taxes.

**Section 4.2     Utilities.** Lessee shall pay all charges for gas, electricity, light, heat, air conditioning, power, telephone and other communication services, and all other utilities and similar services rendered or supplied to the Leased Property and the Improvements, and all water rents, sewer service charges, or other similar charges levied or charged against, or in connection with, the Leased Property and the Improvements.

**Section 4.3     Development Easements.** Lessee may determine it is necessary, desirable, or required that, in order to construct, operate, own and/or finance Lessee's Facility (as hereinafter defined) and/or serve the Leased Property (and Lessee's project thereon), streets, water pipelines, sewer, drainage, gas or power lines, and other easements, dedications and similar rights be granted or dedicated over or within portions of other property owned by the County for the benefit of the Leased Property (the "**Development Easements**"). The County will reasonably cooperate with Lessee by granting Lessee such Development Easements provided that (a) any Development Easements shall be in a location reasonably acceptable to the County, (b) Lessee pays all of the County's reasonable out of pocket costs in connection with the same (*i.e.*, third party consultant, escrow and recording fees), (c) the County has no cost or liability in connection with the same, (d) Lessee pays reasonable compensation to the County for such Development Easements (at a per acre price equal to the per acre Rent value set forth in Article III hereto), and (e) Lessee obtains all the necessary permits, entitlements and approvals for Lessee's installation of any improvements on granted Development Easements. The County shall, on request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term, in accordance with this paragraph.

#### **ARTICLE V**

#### **IMPROVEMENTS**

**Section 5.1     Lessee's Facility.** Without limitation upon the other provisions of this Article 5, and subject to Lessee obtaining all entitlements and permits required by applicable law, the County agrees that Lessee, at Lessee's sole cost and expense, shall construct, own, operate,

maintain, replace, repower and improve upon the Leased Property one or more photovoltaic electrical generating facilities together with related improvements, appurtenances, streets, sidewalks and facilities (together, "**Lessee's Facility**") within five years after the Effective Date subject to Force Majeure (as defined below). In the event that Lessee has not completed construction of and is operating Lessee's Facility by the date that is five (5) years after the Effective Date, subject to Force Majeure, then the County shall have the right as its sole remedy to terminate this Lease upon not less than ninety (90) days written notice to Lessee, whereupon this Lease shall terminate, and the parties shall have no further rights or obligations hereunder.

**Section 5.2 Construction of Improvements.** Lessee shall, at its sole cost, risk and expense, construct Improvements (as hereinafter defined) upon the Leased Property (including, without limitation, Lessee's Facility) in accordance with all applicable laws (including, but not limited to, the California Environmental Quality Act ("**CEQA**"), the National Environmental Protection Act ("**NEPA**") if applicable, and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority as may be reasonably necessary for the same, and otherwise in the following manner:

(a) Lessee shall submit a development plan for the entire proposed development to the appropriate Governmental Authority and construct the development in accordance to the agreed upon schedule. Such Improvement, and any other improvements, alterations and installation of fixtures, to be undertaken by Lessee shall have the prior written approval of County after Lessee has submitted to County proposed plot and building plans and specifications therefor in writing. Upon such approval, Lessee shall complete such improvements in strict compliance with said plans and specifications. Lessee shall not be permitted to complete improvements of any kind in any environmentally sensitive areas or avoidance areas, in each case as designated by applicable law, of the Leased Property and such limitation does not operate to abate or adjust the acreage leased or the Rent for the Leased Property.

(b) Prior to commencement of construction of the Improvements, Lessee shall designate in writing to the County an individual that will be involved in such construction and who has the authority to bind Lessee in connection with such construction (the "**Lessee's Designated Representative**"). The County shall within a reasonable amount of time after receipt of such notice from Lessee designate an individual who has authority to bind the County with regards to the construction of the Improvements (the "**County's Designated Representative**"; and together with the Lessee's Designated Representative, the "**Designated Representatives**").

(c) The Designated Representatives shall meet from time to time, as often as necessary, in order to coordinate the construction of the Improvements so as to reduce disturbance to the County's use of the balance of the Blythe Airport during such construction. Such coordination may include, among other things, scheduling for delivery of equipment and materials, providing staging areas for construction, storage of equipment and materials, and use of access routes on the Leased Property.

(d) Lessee shall repair all damage to Blythe Airport or any of the County's property, including but not limited to, personal property or improvements made by the County ("**County Personal Property**") (not including the Leased Property or any other property leased by Lessee from the County) caused by Lessee during the construction of the Improvements; *provided*,



*however, that* Lessee's repair obligation shall not extend to or include any damage arising from or related to (i) conditions in, on, under or about any of the County Personal Property, the Leased Property or Blythe Airport that existed prior to the commencement of such construction or were not otherwise caused or introduced by Lessee, (ii) Lessee's discovery of such existing conditions on the Blythe Airport or County Personal Property, (iii) negligence or willful misconduct of the County, or (iv) any violation of applicable law or this Agreement by the County.

(e) Lessee complies with applicable Regulations (as hereinafter defined) relating to the Blythe Airport in connection with such construction.

(f) It is specifically acknowledged that Lessee intends to, as part of its development plan, construct Improvements located upon the Leased Property and upon adjoining parcels of real estate in which Lessee has ownership, leasehold or other interests so long as such Improvements are constructed in accordance with any applicable laws. As used hereafter, the term "**Improvements**" means any buildings, structures, transmission lines or other improvements located at any time upon the Leased Property (including, without limitation, the Lessee's Facility). The Improvements, and any fixtures, equipment or other property placed on the Leased Property by Lessee shall be the sole and exclusive property of Lessee and the County waives any and all lien rights it may have in the foregoing.

**Section 5.3     Alterations.** At any time and from time to time during the Term, Lessee may perform such minor alteration, maintenance, renovation, repair, refurbishment, replacement, repowering, removal, and other work with regard to any Improvements as Lessee may elect provided that Lessee complies with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. Minor alterations shall mean any physical modification to a structure that is limited in scope or has a minor visual impact in relation to the total design of the project. Minor alterations normally include such changes as replacement of the type of solar panels as was provided in the approved plans. If any such work is not related to Lessee's Facility or is a "**Substantial Alteration**", then Lessee shall be required to obtain the consent of the County for such Improvements and (2) comply with any applicable laws (including, but not limited to, CEQA, NEPA (if applicable) and any applicable local laws and ordinances) and permits and licenses from any Governmental Authority in connection with the same. "Substantial Alteration" shall mean any physical modification to a structure that involves a major portion of the structure or has a substantial visual impact on the structure or its surroundings. Substantial Alterations normally include such changes as a replacement of solar panels that is a change in technology type or a type not approved by the plans.

**Section 5.4     Liens.** Lessee shall have no right, authority, or power to bind the County or any interest of the County in the Leased Property for any claim for labor or for material or for any other charge or expense incurred in construction of any Improvements or performing any alteration, renovation, repair, refurbishment, or other work with regard thereto, nor to render the County's interest in the Leased Property liable for any lien or right of lien for any labor, materials, or other charge or expense incurred in connection therewith, and Lessee shall in no way be considered as the agent of the County in the construction, erection, or operation of any such Improvements. Lessee shall give to the County not less than twenty (20) days written notice prior to the commencement of any construction in or to the Leased Property, and the County shall have the right to post notices of

non-responsibility in or on the Leased Property as provided by law. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Leased Property shall be filed, Lessee shall promptly pay or bond such liens to the County's reasonable satisfaction or otherwise obtain the release or discharge thereof.

**Section 5.5     Removal of Property.** Title to and ownership of all Improvements constructed by, on behalf of, or at the direction of Lessee shall be and remain in Lessee. Upon expiration or termination of this Lease, Lessee shall surrender the Leased Property. Unless otherwise agreed to in writing by the County, Lessee shall remove, at its own expense, any and all of Lessee's fixtures, machinery, equipment, furniture, furnishings and/or movable personal property installed in or on the Leased Property and/or the Improvements not later than one hundred eighty (180) days following the expiration of the Term, or earlier termination thereof. Lessee shall repair any damage caused by Lessee to the Leased Property to the extent reasonably practicable and leave the Property in a good, safe and clean condition with all materials from the Improvements properly removed from the Blythe Airport. In the event that Lessee does not remove such Improvements, then as the County's sole remedy, they shall become the property of the County for no consideration of any kind, and Lessee shall execute any documents that may be required or necessitated conveying its interest in such improvements, alterations, and fixtures to County.

**Section 5.6     Compliance with CEQA and NEPA.**

(a) The County and Lessee will comply with the requirements of the CEQA and NEPA. Lessee will apply for all applicable Governmental Authorities (including the County) for all necessary permits and licenses for its project on the Leased Property.

(b) Lessee understands that the proposed development of Lessee's Facility is subject to development approvals yet to be obtained and the review and approval of the project in accordance with the CEQA and, if applicable, NEPA. It is expressly understood by the parties hereto that the County makes no representations or warranties with respect to approvals required by any governmental entity, including the County, or with respect to any approvals hereinafter required from the County or other Governmental Authorities, with the County reserving full police power authority over the proposed facility. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items nor a guarantee that such approvals or permits will be issued within a particular time or with or without any conditions which require mitigation for any impacts the construction and operation of the facility comply with the terms and conditions might have.

**ARTICLE VI**  
**USE, CONDITIONS ON USE, MAINTENANCE, AND REPAIRS**

**Section 6.1     Use.** Subject to the terms and provisions hereof, Lessee shall have the right to use and possess the Leased Property for the development, construction, operation, ownership, maintenance, replacement, repower, power storage, improvement and removal of one or more photovoltaic electrical generating facilities, any ancillary uses and no other uses without the prior consent of the County.

**Section 6.2     Conditions on Use.**

(a) Lessee's use of the Leased Property is subject to the following: (1) Minimum Standards for Fixed Base Operators attached hereto as Exhibit "C", (2) Federally Required Lease Provisions attached hereto as Exhibit "D", (3) the Storm Water Pollution Prevention Plan described on Exhibit "E", (4) FAA Airport Compliance Requirements attached hereto as Exhibit "F", and (5) the retention by the County of an Avigation Easement in the form attached hereto as Exhibit "G".

(b) Lessee shall not use or store any flammable or polluting substance (other than small amounts of oil in proper containers) on the Blythe Airport except with the express written consent of the County. The use of combustible chemicals, cleaning solvents, paint stripper, painting or welding on Blythe Airport is strictly prohibited except as may be authorized in writing by the County.

(c) Unless authorized to enter onto the Blythe Airport's aircraft movement area by the County's issuing a gate card, all motor vehicles and trailers occupying the Blythe Airport because of Lessee's use of the Leased Property must be parked in public parking lots designated by the County, display current license tags and meet any and all California environmental and insurance requirements. Lessee must ensure the safe operation of its vehicles or trailers while on the Blythe Airport. Aircraft always have the right-of-way on Blythe Airport. Vehicles of Lessee will not enter any aircraft operations area of the Blythe Airport. Conditions may arise where it may be required under applicable law for the County to withdraw, temporarily or permanently, without prior notice, the privilege of parking motor vehicles in any assigned area on the Blythe Airport.

(d) Lessee shall not exercise the rights granted herein in any manner, which would interfere with the departure or arrival of aircraft at the Blythe Airport.

(f) Lessee agrees to and shall, at Lessee's sole expense, promptly comply with all statutes, ordinances, resolutions, rules, and regulations of any applicable Federal, State or local agencies, the covenants and restrictions of this Lease, any and all directives concerning airport operations and flight safety issued by the County, and requirements of any applicable fire insurance underwriters or rating bureaus, now in effect or which may hereafter come into effect, whether or not they reflect a change in law or policy from that now existing, during the Term or any part of the Term hereof relating in any manner to the occupation or use by the Lessee of the Leased Property.

(g) Lessee understands and agrees that it is subject to severe restrictions on its activities at the Blythe Airport due to environmental concerns, statutes, regulations, ordinances and rules. Lessee agrees to use the Leased Property for lawful uses only.

(h) Lessee, in utilizing the Leased Property, shall not discriminate against any person or class of persons by reason of race, color, creed, sex or national origin and shall be bound by the provisions of Part 15 of the Federal Aviation Regulations and any amendments thereto which are incorporated by reference as if set forth herein in full.

(i) Other than safety materials, informative materials or public warnings relating to Lessee's Facility or the Improvements, Lessee shall not erect, maintain or display any signs or other forms of advertising upon the Leased Property without first obtaining the written approval of the County, which approval shall not be unreasonably withheld.

(j) Secure, at Lessee's expense, all necessary permits and licenses as it may be required to obtain the same, and pay for all fees and taxes levied against Lessee or required to be paid by Lessee by any authorized public entity. Lessee recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

### **Section 6.3     The County's Reserved Rights.**

(a) The Leased Property is accepted by Lessee subject to any and all existing record easements or other record encumbrances. Subject to (i) the requirements in Section 7 of the Option Agreement and (ii) the County's compliance with applicable laws and Lessee's rules and standards relating to the siting, operations and safety of Lessee's Facility and the Improvements, County shall have the right to enter upon the Leased Property and to install, lay, construct, maintain, repair, monitor and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, connections, water, wells, oil and gas pipeline, and telephone and telegraph power lines and such other facilities and appurtenances necessary or convenient to use in connection therewith, over, in, upon, through, across and along the Leased Property or any part hereof so long as it does not unreasonably interfere with Lessee's use of the Leased Property. Lessee shall provide its rules and standards relating to the siting, operations and safety prior to any such entry by the County, its representatives or agents. Such rules and standards shall be reasonable and County shall have the right to provide input on Lessee's rules and standards. Lessee shall make any existing pivot irrigation wells located within the Leased Property accessible and said wells shall remain available for future monitoring. County also reserves the right to grant franchises, easements, rights of way and permits in, over and upon, along or across any and all portions of said Leased Property as County may elect; provided, however, that no right of the County provided for in this Section 6.3 shall be so executed as to interfere unreasonably with Lessee's use hereunder, or impair the security or rights of any secured creditor or financier of Lessee. County shall cause the surface of the Leased Property to be restored to its original condition (as they existed prior to any such entry) upon the completion of any construction by County or its agents. In the event that such construction may adversely affect any of Lessee's Improvements or operations made upon the Leased Property, County shall meet and discuss the proposed construction so that the Parties may come to an agreed upon resolution. County will provide thirty (30) days advance written notice to Lessee before County exercises any of County's rights set forth in this Section 6.3; provided, however, in the event such right must be exercised by reason of emergency, then County shall give Lessee such notice as soon as is reasonably practicable under the existing circumstances.

(b) The County reserves the right to further develop or improve the aircraft operating area of Blythe Airport as it deems appropriate provided such development or improvements do not unreasonably interfere with Lessee's Facility, including, but not limited to, blocking or impairing the access (whether direct or indirect) to sunlight. The County reserves the right to take any action it reasonably considers necessary to protect the aerial approaches of the Blythe Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected, any building or other structure on the Blythe Airport, which in the reasonable opinion of the County, would constitute a hazard to aircraft. The foregoing rights of the County shall not adversely affect the Improvements or Lessee's rights under this Lease.

(c) During the time of war or national emergency, the County shall have the right, if mandated by the United States Government, to lease the landing area of the Blythe Airport, or any part thereof, to the United States Government for military use and, if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of such lease to the Government, shall be suspended. In that event, a just and proportionate part of the Rent hereunder shall be abated, and the period of such closure shall be added to the term of this Lease, or any extensions thereof, so as to extend and postpone the expiration thereof unless Lessee otherwise elects to terminate this Lease.

(d) Notwithstanding any provisions herein, this Lease shall be subordinate to the provisions of any existing agreement between the County and the United States, relative to the operation or maintenance of the Blythe Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure of reimbursement to the County of Federal funds for the development of said airport. A list of such agreements is attached hereto as Schedule 6.3, and the County represents and warrants that true and complete copies of such agreements have been provided by the County to Lessee.

#### **Section 6.4     Maintenance and Repairs.**

(a) The County shall have no obligation to maintain or repair the Leased Property and Improvements. Lessee shall have no obligation to exercise control over, maintain, repair or protect any improvements or property placed on, under or above the Leased Property or Blythe Airport other than those improvements or property that are owned by Lessee.

(b) Lessee shall maintain the Leased Property and the Improvements to be constructed thereon by or on behalf of Lessee in a neat, safe, orderly and attractive condition during the Term of this Lease, and Lessee shall provide for the sanitary handling and disposal of all refuse accumulated as a result of Lessee use of the Leased Property and the Improvements thereon. In addition, the exterior and the interior of the Improvements (to be constructed upon) on the Leased Property shall be maintained by Lessee(s) in good working condition and repair during the Term of this Lease. If and to the extent that any improvements and/or property are placed on the Leased Property as a result of the County's exercise of its rights under Section 6.3, the County shall maintain and keep in good order (or caused to be maintained and kept in good order) such improvements and/or property, and will do so in a manner that does not unreasonably interfere with Lessee's use of the Leased Property.

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 6.4 OR ELSEWHERE IN THIS LEASE, LESSEE SHALL HAVE NO RESPONSIBILITY FOR, OR LIABILITY OR OBLIGATION WITH RESPECT TO, THE ENVIRONMENTAL CONDITION OF, ON OR UNDER THE LEASED PROPERTY (INCLUDING, BUT NOT LIMITED TO, THE PRESENCE OF HAZARDOUS OR CONTROLLED SUBSTANCES) EXCEPT SOLELY TO THE EXTENT CAUSED, CREATED OR EXACERBATED BY LESSEE.

**Section 6.5     No Waste.** Lessee shall not use or permit the use of the Leased Property in any manner that will tend to create waste or a private or public nuisance. Without limiting the

foregoing, Lessee shall not use steer manure or other malodorous fertilizers without the prior written permission of the County.

## **ARTICLE VII**

### **INSURANCE AND INDEMNITY**

**Section 7.1     Insurance.** Without limiting or diminishing the Lessee's obligation to indemnify or hold the County harmless as provided in this Lease, Lessee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's, in the amounts of not less than that specified herein or in minimum amounts as may be subsequently uniformly by the County to all lessees at the Blythe Airport in the exercise of the County's reasonable commercial business judgment and consistent with airport industry practice for similar kinds of activities, during the Term. These requirements, with the approval of the County's Risk Manager, may be modified to reflect the activities associated with the Lessee provided that any changes are reasonable in nature and consistent with industry standards. Lessee shall have, or cause to have, all insurance required under this Lease, in place within thirty (30) days after the date of commencement of the Term.

**Section 7.2     Workers' Compensation.** If the Lessee has employees as defined by the State of California, the Lessee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County, which waiver can be provided by blanket endorsement.

**Section 7.3     Leased Property; Commercial General Liability.** Lessee shall maintain Commercial General Liability insurance coverage, with an endorsement modifying the policy to delete the aircraft exclusion as it relates to the Lessee's occupancy, operation, maintenance or use of the Blythe Airport Property, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of Lessee's performance of its obligations hereunder. Policy shall include the County as an additional insured. Policy limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit.

**Section 7.4     Vehicle Liability.** If vehicles or mobile equipment are used in the performance of Lessee's obligations under this Lease, then Lessee shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall be no less than two (2) times the occurrence limit. Policy shall include the County as an additional insured.

**Section 7.5     Excess Liability.** Lessee shall maintain \$10,000,000 of Excess Liability coverage that will respond excess of the scheduled underlying Commercial General Liability and Vehicle Liability policies, with coverage that is no less broad than the underlying policies. County shall be an additional insured under said policy, pursuant to policy wording which defines an

Insured to include any person or organization that the Named Insured has agreed to provide insurance to, in writing, prior to the occurrence of the loss.

**Section 7.6 Course of Construction Insurance.** During the full term of construction of the planned Improvements, Lessee shall purchase and maintain or cause to be purchased and maintained All Risk Builder's Risk insurance (Completed Value Form). The Course of Construction coverage limit of insurance shall equal or exceed the highest values exposed to loss at any one time during the Project term. Policy shall include the County as an additional insured, to the extent of its interest.

**Section 7.7 Real and Personal Property Insurance.** All-Risk real and personal insurance coverage for the full replacement cost value of building, structures, fixtures, equipment, improvements/alterations and systems on the premises for property that the Lessee owns or is contractually responsible for. Policy shall provide a Waiver of Subrogation in favor of each Landlord Party. Policy shall include business interruption, extra expense, and expediting expense to cover the actual loss of business income sustained during the restoration period.

**Section 7.8 General Insurance Provisions - All lines.**

(a) All insurance maintained in accordance with the provisions of Sections 7.1 through 7.6 shall be issued by creditworthy and commercially reasonable licensed companies, shall be carried in the name of the Lessee, with County as additional insured, but only to the extent of its interest. The additional insured status can be provided through the use of blanket additional insured endorsements.

(b) It is understood and agreed to by the parties hereto that the Lessee's insurance shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(c) Lessee shall require all contractors and subcontractors used on the Leased Property to maintain reasonable types and amounts of insurance. Lessee shall also require that the contractors and subcontractors to waive subrogation for workers' compensation insurance and include the County as additional insureds thereunder.

(d) Lessee shall not commence operations until the County has been furnished original Certificates of Insurance as well as the insurance endorsements and policy wordings, as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the Certificate of Insurance.

(e) If during the Term of this Lease or any extension thereof, there is a material change in the scope of use of the Leased Property, the County reserves the right to reasonably adjust the types of insurance required under this Lease and the monetary limits of liability for the insurance coverages currently required herein, if, upon advice of the County's Risk Manager, the amount or type of insurance carried by the Lessee has become inadequate.

(f) Lessee agrees to notify the County of any claim by a third party or any incident or event that may give rise to a claim arising from this Lease.

## **Section 7.9     Indemnity.**

(a) Lessee shall hereby release, indemnify and hold harmless the County, its successors, assigns, legal representatives, officers, directors, employees, agents, representatives agencies, districts, special districts and departments, their respective directors, officers, Board of Supervisors, and elected and appointed officials ("**Indemnified Parties**") from all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, costs and attorneys' fees) of any nature, kind or description of any person (including, without limitation, the employees of the parties hereto) or entity, any liability whatsoever (collectively, "**Losses**"), based upon (i) the use, occupancy or presence of Lessee, its employees, members, agents, representatives, contractors, subcontractors in, on, or about the Leased Property; (ii) the performance, or failure to perform by the Lessee, its employees, members, agents, representatives, contractors, subcontractors, its work or any obligation under this Lease; (iii) any act or omission of Lessee, its officers, employees, subcontractors, agents or representatives directly or indirectly arising out of or in any way relating to or in any way connected with the Leased Premises or this Lease, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Lessee shall defend, at its sole expense, all costs and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnified Parties in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Lessee, Lessee shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the County; *provided, however, that* any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Lessee's indemnification to Indemnified Parties as set forth herein.

Lessee's obligation hereunder shall be satisfied when Lessee has provided to Indemnified Parties the appropriate form of dismissal relieving Indemnified Parties from any liability for the action or claim involved.

The specified insurance limits required in this Lease shall in no way limit or circumscribe Lessee's obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Lessee from indemnifying the Indemnified Parties to the fullest extent allowed by law.

Lessee shall require each contractor of every tier to indemnify the County of Riverside in respects to any claims arising from their contract.

Notwithstanding anything to the contrary in this Lease, Lessee shall have no obligation to indemnify, defend or hold any Indemnified Party harmless from or against any Losses to the extent of the negligence, willful misconduct, violation of law or breach of this Agreement by any Indemnified Party.

(b) The County shall indemnify, defend and hold harmless Lessee, its parents, affiliates, subsidiaries and each of their respective officers, directors, managers, members, partners, employees, agents, contractors and consultants from any Losses whatsoever based or asserted upon (i) any services, or activities of, or permitted by, any Indemnified Party on the Blythe Airport,



Leased Property or Lessee's Facility, and (ii) the performance, or failure to perform by any Indemnified Party of any right or obligation of the County under this Lease. Such Losses may include, but are not limited to, property damage, bodily injury, or death or any other element of any kind or nature whatsoever. Notwithstanding anything to the contrary in this Lease, the County shall have no obligation to indemnify Lessee to the extent of Lessee's, its officers, agents, employees, contractors, subcontractors agents or representatives sole negligence, willful misconduct, violation of law or breach of this Agreement.

**Section 7.10 Subrogation.** Anything in this Lease to the contrary notwithstanding, the County and Lessee each hereby waive any and all rights of recovery, claims, actions, or causes of action against the other, its agents, officers, and employees for any injury, death, loss, or damage that may occur to persons or the Improvements, or any part thereof, or any personal property of such party therein, by reason of fire, the elements, or any other cause which is insured against under the terms of the policies of casualty insurance or worker's compensation insurance that Lessee is required to provide hereunder, or under any policies of insurance maintained by the County, to the extent, and only to the extent, of any proceeds actually received by the County or Lessee, respectively, with respect thereto, regardless of cause or origin, including the negligence of either party hereto, its agents, contractors, invitees or licensees, and each party covenants that no insurer shall hold any right of subrogation against the other.

**Section 7.11 Coverage.** All insurance described in this Article 7 may be obtained by Lessee by endorsement or equivalent means under any blanket insurance policies maintained by Lessee, provided that the coverage and other terms of such insurance otherwise comply with this Article 7.

## **ARTICLE VIII CASUALTY LOSS**

**Section 8.1 Lessee's Obligation to Restore.** Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, Lessee may (at Lessee's discretion) repair, replace, remove, restore, reconstruct; improve, modify and/or expand the same; *provided, however, that* Lessee shall make its decision with respect to the foregoing not later than one (1) year after the event of casualty by written notice to the County, and shall thereafter diligently pursue the completion of the same.

**Section 8.2** In the event that Lessee chooses to remove the Improvements, the Leased Property shall be restored to a good, safe and clean condition and all materials from the Improvements properly removed from the Blythe Airport and in accordance with Section 5.5.

## **ARTICLE IX CONDEMNATION**

**Section 9.1 Statement of Intent.** The parties represent and warrant that it is their intention that neither the Leased Property, Improvements, nor any portion thereof, shall be subject to a condemnation action or proceeding at anytime during the Term. However, the balance of the provisions of this Article 9 apply in the event that circumstances affecting the Leased Property

substantially change in the future to the extent that a condemnation action or proceeding affecting the Leased Property becomes necessary.

**Section 9.2     Total Taking.** Should the entire Leased Property or Improvements be taken (which term, as used in this Article 9, shall include any conveyance in avoidance or settlement of eminent domain, condemnation, or other similar proceedings) by any Governmental Authority, corporation, or other entity under the right of eminent domain, condemnation, or similar right, then Lessee's right of possession under this Lease shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (a) first, to the payment of all reasonable fees and expenses incurred in collecting the award; and (b) next, the balance of the award shall be equitably apportioned between the County and Lessee based on the then respective fair market values of the County's interest in the Leased Property (appraised by reference to all relevant factors including the then present value of the County's reversionary interest in the entire Leased Property after expiration of the Term) and Lessee's interest in the Leased Property and the Improvements (appraised by reference to all relevant factors, including the income stream derivable by Lessee from the Leased Property and Improvements for the remainder of the Term). After the determination and distribution of the condemnation award as herein provided, the Lease shall terminate.

**Section 9.3     Partial Taking.** Should a portion of the Leased Property or Improvements be taken by any Governmental Authority or other entity under the right of eminent domain, condemnation, or similar right, this Lease shall nevertheless continue in effect as to the remainder of the Leased Property or Improvements unless, in Lessee's good faith judgment, so much of the Leased Property or Improvements shall be so taken as to make it economically unsound to use the remainder for the uses and purposes contemplated hereby, whereupon this Lease shall terminate as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Leased Property and Improvements had thus been taken, and the award therefor shall be distributed as provided in Section 9.2.

**Section 9.4     Award on Partial Taking; Rent Reduction.** In the event of a partial taking where this Lease is not terminated, and as a result thereof Lessee will need to restore, repair, or refurbish the remainder of the Leased Property and the Improvements in order to put them in a useable condition, then the award shall first be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property and the Improvements taken. If a portion of the Leased Property or the Improvements is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned as provided in Section 9.2, considering the respective interests of the County and Lessee in the portion of the Leased Property taken. In the event of a partial taking where this Lease is not terminated, the Rent shall be proportionately reduced, as of the date of such taking, for the remainder of the Term based on the number of acres of the Leased Property which were taken.

**Section 9.5     Temporary Taking.** If the whole or any portion of the Leased Property or the Improvements shall be taken for temporary use or occupancy, the Term shall not be reduced or affected. Except to the extent Lessee is prevented from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms, and provisions of this Lease. Rent shall continue to be paid during the temporary taking. In the event of any temporary taking, Lessee shall be entitled to receive the

entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to the County therefrom for the estimated cost of restoration of the Leased Property and the Improvements to the extent that any such award is intended to compensate for damage to the Leased Property and the Improvements, shall be apportioned between the County and Lessee as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period. In the event that the County receives an award for the estimated cost of restoration of the Leased Property, then Lessee shall be relieved from its obligations to restore the Leased Property.

**Section 9.6 Parties to Condemnation Proceeding.** Lessee, if it so desires, shall be made a party to any condemnation proceeding.

**Section 9.7 Notice of Taking, Cooperation.** Lessee and the County shall immediately notify each other of the commencement of any eminent domain, condemnation, or other similar proceedings with regard to the Leased Property or the Improvements of which Lessee or the County (as the case may be) has actual knowledge. The County and Lessee covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof.

## **ARTICLE X**

### **SUBLETTING AND ASSIGNMENT**

**Section 10.1 Prohibition.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, neither Lessee nor any trustee, receiver or other successor to Lessee shall, either voluntarily or by operation of law, assign sell, encumber, pledge or otherwise transfer all or any part of Lessee's leasehold estate hereunder, or permit the Leased Property to be occupied by anyone other than Lessee or Lessee's employees, contractors, or sublet the leasehold estate or any portion thereof, without the County's prior written consent in each instance.

**Section 10.2. Consent Mandatory.** The consent of the County shall be mandatory if the assignment is, in whole or in part to (collectively, "**Mandatory Consent Transactions**"): (i) any other party or entity that is controlled by, under common control with or that controls Lessee, (ii) in connection with the sale or all or substantially all of the assets of Lessee, (iii) in connection with any financing (including, but not limited to, construction and permanent financings and refinancings), funding or sale-leaseback transactions. In connection with any Mandatory Consent Transaction, Lessee shall provide the County with written notice of such transaction on the form of Consent to Mandatory Consent Transaction in the form attached hereto as Exhibit "H" (the "**Form of Mandatory Consent**") and the County shall deliver to Lessee the County's written acknowledgement of the same within sixty (60) calendar days of such delivery. In the event that the County does not provide to Lessee with such written acknowledgement within such 60 days, the County shall be deemed to have given its consent to the Mandatory Consent Transaction described in the Form of Mandatory Consent. If and to the extent that Lessee receives rent from any assignee or Lessee of this Lease in excess of the Rent required hereunder, then such excess shall be paid to the County.

**Section 10.3 Required Information.** In connection with requesting the County's consent to an assignment of this Lease or a subletting of the Leased Property or any portion thereof for which the County's consent is required other than with respect to a Mandatory Consent Transaction, Lessee shall submit in writing to the County: (i) the name of the proposed assignee or subtenant; (ii) the terms and provisions of the proposed sublease or assignment; and (iii) such reasonable information as the County may request concerning the proposed subtenant or assignee, including but not limited to a balance sheet of the proposed subtenant or assignee as of a date within ninety (90) days of the request for the County's consent, statements of income or profit and loss of the proposed subtenant or assignee for the two year period preceding the request for the County's consent and a written statement in reasonable detail as to the business experience of the proposed subtenant or assignee during the five years preceding the request for the County's consent.

**Section 10.4 The County's Options.** Subject to Section 6.2, at any time with the sixty (60) days after the County's receipt of the information specified in Section 10.3 above, the County shall by written notice to Lessee elect to (i) consent to the subletting or assignment upon the terms and to the subtenant or assignee proposed; (ii) condition such consent upon the assumption by such assignee or Lessee of all obligations hereunder and such other reasonable conditions as the County may impose, including but not limited to adjustment of the rental payable hereunder up to the amount of any rent received by Lessee is to receive in excess of the Rent required hereunder; or (iii) refuse to give its consent. In the event that the County does not respond to Lessee in writing in such sixty (60) day period, then the County shall be deemed to have approved the proposed assignment or subletting, as applicable. Lessee and the County agree that the County shall not unreasonably withhold, condition or delay its consent to a proposed subletting or assignment. Lessee further agrees that no assignment or subletting consented to by the County shall impair or diminish any covenant, condition or obligation imposed upon Lessee by this Lease or any right, remedy or benefit afforded the County by this Lease.

**Section 10.5 Manner of Notifying the County.** If the County consents to such assignment or subletting, Lessee may thereafter within ninety (90) days after the expiration of said sixty (60) day period enter into a valid assignment or sublease of the premises or portion thereof, upon the terms and conditions described in the information required to be furnished by Lessee to the County pursuant to Section 10.3 above or other terms not less favorable to Lessee, provided however, that any material change in the terms of such subletting or assignment from those approved by the County shall be subject to the County's consent as provided herein.

**Section 10.6 Invalidity.** Except if to, from, by or on behalf of a Permitted Mortgagee whereby the County has already provided its consent pursuant to Section 10.2, no transfer or assignment, whether voluntary or involuntary, by operation of law, under legal process or proceedings, or otherwise, other than pursuant to a foreclosure as defined in this Lease shall be valid or effective without such prior written consent and approval.

## **ARTICLE XI**

### **LESSEE'S FINANCING**

**Section 11.1 Lessee's Right to Encumber.** Lessee may, without the County's consent or joinder, encumber its interest in this Lease and the leasehold estate hereby created with one or more

deeds of trust, mortgages, or other lien instruments to secure any borrowings or obligations of Lessee or Lessee's affiliates. Any such mortgages, deeds of trust, and/or other lien instruments, and the indebtedness secured thereby, provided that the County has been given notice thereof as set forth in Section 14.1, are herein referred to as "**Permitted Mortgages**," and the holder or other beneficiary thereof are herein referred to as "**Permitted Mortgagees**." No lien of Lessee upon its interest in this Lease and the leasehold estate hereby created shall encumber or affect in any way the interest of the County hereunder or in and to the Leased Property, except insofar as the County is obligated to take certain actions as to Permitted Mortgagees as provided in this Article XI. The Improvements and the leasehold estate created hereby shall at all times remain separate and apart from the title to the Leased Property for all purposes relating to the interests of any mortgagees of the County and Lessee.

**Section 11.2 Mortgage Protective Provisions.** If Lessee encumbers its interest in this Lease and the leasehold estate hereby created with liens as above provided, then Lessee shall notify the County thereof, providing with such notice the name and mailing address of the Permitted Mortgagee in question, the County shall, upon request, acknowledge receipt of such notice, and for so long as the Permitted Mortgage in question remains in effect the following shall apply:

(a) The County shall give to the Permitted Mortgagee a duplicate copy of any and all notices which the County gives to Lessee pursuant to the terms hereof, including notices of default, and no such notice shall be effective until such duplicate copy is actually received by such Permitted Mortgagee, in the manner provided in Section 14.1.

(b) There shall be no cancellation, surrender, or modification of this Lease by joint action of the County and Lessee without the prior written consent of the Permitted Mortgagee.

(c) In the event of a Default (as hereinafter defined) should occur hereunder, then the County specifically agrees that:

(1) The County shall not enforce or seek to enforce any of its rights, recourses, or remedies, including but not limited to termination of this Lease or Lessee's right to possession hereunder, until a notice specifying the Default and the event giving rise to such Default has been received by the Permitted Mortgagee, in the manner provided in Section 14.1, and if the Permitted Mortgagee proceeds to cure the Default within a period of 30 days after the later of receipt of such notice or the occurrence of such Default, as to events of Default which Permitted Mortgagee cannot reasonably cure within such time period, the Permitted Mortgagee, to the extent it is reasonably able to do so, commences curing such Default within such time period and thereafter diligently pursues such cure to completion, then any payments made and all things done by the Permitted Mortgagee to effect such cure shall be as fully effective to prevent the exercise of any rights, recourses, or remedies by the County as if done by Lessee;

(2) if the Default is a nonmonetary default that a Permitted Mortgagee cannot reasonably cure without being in possession of the Leased Property, then for so long as the Permitted Mortgagee is diligently attempting to secure possession of the Leased Property (whether by foreclosure or other procedures), provided the Permitted Mortgagee cures any monetary Defaults as well as any other Defaults that are reasonably susceptible of then being cured by the

Permitted Mortgagee, then the County shall allow the Permitted Mortgagee such time as may be reasonably necessary under the circumstances to obtain possession of the Leased Property in order to cure such Default, and during such time the County shall not enforce or seek to enforce any of its rights, remedies or recourses hereunder; and

(3) if the Default is a non monetary default of such a nature that it is not reasonably susceptible of being cured by the Permitted Mortgagee, then the County shall not enforce or seek to enforce any of its rights, remedies, or recourses hereunder so long as Permitted Mortgagee pays all Rent then due and thereafter keeps the monetary obligations of Lessee hereunder current and complies with those other provisions of this Lease which, by their nature, Permitted Mortgagee may then reasonably comply with.

(d) Should this Lease be terminated for any reason other than expiration of the stated Term, then the Permitted Mortgagee shall have the right and option, exercisable by delivering notice to the County not later than 60 days after receipt from the County of written notice of such termination (which notice the County agrees to give) to elect to receive, in its own name or in the name of its nominee or assignee, a new lease of the Leased Property for the unexpired balance of the Term on the same terms and conditions as herein set forth, having the same priority as this Lease, and the County agrees to execute such new lease provided such Permitted Mortgagee shall undertake forthwith to remedy any then uncured Default reasonably susceptible by its nature of being remedied by such Permitted Mortgagee, including the payment of any amount due hereunder.

(e) No Permitted Mortgagee shall be or become liable to the County as an assignee of this Lease until such time as such Permitted Mortgagee, by foreclosure or other procedures, shall either acquire the rights and interests of Lessee under this Lease or shall actually take possession of the Leased Property, and upon such Permitted Mortgagee's assigning such rights and interests to another party or upon relinquishment of such possession, as the case may be, such Permitted Mortgagee shall have no further such liability.

(f) From time to time during the Term, the County shall, within sixty (60) business days after receipt, execute and deliver to a Permitted Mortgagee, or a prospective Permitted Mortgagee, any estoppel, nondisturbance agreement, recognition agreement, consent, lien waiver or other commercially reasonable document requested by any Permitted Mortgagee or prospective Permitted Mortgagee, in each case in form and substance reasonably acceptable to the County.

**Section 11.3 Modifications.** If any prospective Permitted Mortgagee requires modifications to this Lease as a condition to granting a Permitted Mortgage, the County shall not unreasonably withhold its consent to such modifications, provided that the County shall not be required to consent to any such modification pertaining to Rent, the Term, or any other material economic provision of this Lease, nor to any modification which would materially decrease the County's rights or increase its burdens or obligations hereunder. Any out of pocket cost incurred by the County in connection with any such proposed modification shall be borne by Lessee.

**ARTICLE XII**  
**WARRANTY OF PEACEFUL POSSESSION**

The County covenants that Lessee shall peaceably, and quietly have, hold, occupy, use and control to enjoy the Leased Property during the Term, and may exercise all of its rights hereunder, subject only to the provisions of this Lease and applicable governmental laws, rules, and regulations; and the County agrees to defend Lessee's right to such occupancy, use, and enjoyment to the Leased Property against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof, by, through or under the County, but not otherwise, subject only to provisions of this Lease and all applicable governmental laws, rules, and regulations.

**ARTICLE XIII**  
**DEFAULT AND REMEDIES**

**Section 13.1 Default.** Each of the following shall be deemed a "Default" by Lessee hereunder and a material breach of this Lease:

(a) Whenever Lessee shall fail in the payment of Rent, or any other monies required to be paid by Lessee under the express terms of this Lease when the same are due under the terms hereof ("**Monetary Default**"), if the County shall deliver to Lessee a written notice ("**Default Notice**") specifying such Monetary Default, and if the Monetary Default as specified in the Default Notice shall continue for a period of fifteen (15) days after the date of Lessee's receipt of the Default Notice, then Lessee shall be in Default.

(b) In the event of any breach of this Lease by Lessee other than a Monetary Default ("**Other Default**"), if the County shall deliver to Lessee a Default Notice specifying such Other Default and if the Other Default so specified by the Default Notice shall not be removed or cured after a period of sixty (60) days from the date of Lessee's receipt of the Default Notice then Lessee shall be in Default; *provided, however, that* as to any Other Default that Lessee cannot reasonably cure with reasonable diligence within such period, Lessee shall not be in Default if Lessee proceeds in a commercially reasonable manner to remedy the same within such sixty (60) day period.

**Section 13.2 Remedies.** If a Default occurs, then subject to the rights of any Permitted Mortgagee as provided in Article XI, the County may at any time thereafter prior to the curing thereof pursue any rights and remedies available to the County hereunder, at law, in equity or otherwise (including, but not limited to, the termination of this Lease). Upon the County's election to terminate this Lease, and provided that the County has complied with the provisions of Article XI in connection with such Default, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the Term hereof.

**ARTICLE XIV**  
**MISCELLANEOUS**

**Section 14.1 Notices.** All written notices and demands of any kind which either party may be required or may desire to serve upon the other party in connection with this Agreement may be served by (a) personal service, (b) registered or certified mail (postage pre-paid), (c) facsimile

transmission (followed by next day overnight delivery service) or (d) next day overnight delivery service. Any such notice or demand shall be addressed to the parties as listed in this Section 14.1. Service of any such notice or demand shall be deemed complete (i) upon receipt in the event of personal service or if sent via registered or certified mail, (iii) upon transmission with a printed receipt from the transmitting facsimile machine in the event sent via facsimile transmission and (iii) on the next business day if sent via an overnight delivery service, if sent to each party at the address set forth below with the required proper postage:

**To the County:** Economic Development Agency  
Aviation Division  
3403 Tenth Street, 5<sup>th</sup> Floor  
Riverside, CA 92501  
Telephone: (951) 955-8916  
Facsimile: (951) 698-7920

**To Lessee:** NRG Solar Blythe II  
1015 West Hays Street  
Boise, Idaho 83702  
Attention: Bob Mooney  
Telephone: (208) 338-2603  
Facsimile: (208) 890-0369

With a copy to: Reed Smith LLP  
1901 Avenue of the Stars, Suite 700  
Los Angeles, California 90067  
Attention: Stephane D. Nguyen  
Telephone: 310.734.5200  
Facsimile: 310.734.5299

Any party, by written notice to the others in the manner herein provided, may designate an address different from that set forth above. Notices required pursuant to the terms of this Agreement shall be delivered prior to 5 p.m. on the date such notice is due.

**Section 14.2 Modification and Non Waiver.** No variations, modifications, or changes herein or hereof shall be binding upon any party hereto unless set forth in a writing executed by it or by a duly authorized officer or agent. No waiver by either party of any breach or default of any term, condition, or provision hereof, including without limitation the acceptance by the County of any Rent at any time or in any manner other than as herein provided, shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character, or description under any circumstance. No waiver of any breach or default of any term, condition, or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

**Section 14.3 Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of California.



**Section 14.4 Number and Gender; Captions; References.** Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and Section headings in this Lease are for convenience of reference and shall not affect the construction or interpretation of this Lease. Whenever the terms "hereof," "hereby," "herein," or words of similar import are used in this Lease they shall be construed as referring to this Lease in its entirety rather than to a particular Section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated Article or Section of this Lease.

**Section 14.5 Estoppel Certificate.** The County and Lessee shall execute and deliver to each other, within sixty (60) days after request therefor by the other party, or by any Permitted Mortgagee, a certificate addressed as indicated by the requesting party and stating:

- (a) whether or not this Lease is in full force and effect;
- (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
- (c) whether or not there are any existing defaults hereunder known to the party executing the certificate, and specifying the nature thereof;
- (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
- (e) such other matters as may be reasonably acceptable to the Landlord Parties (to the extent each of them is a party to the estoppel certificate) and Lease.

**Section 14.6 Severability.** If any provision of this Lease or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

**Section 14.7 Attorney Fees.** For actions for the enforcement of the agreement, the prevailing party may be entitled to reasonable attorneys' fees and costs only if it has prevailed in a judgment by a court of competent jurisdiction.

**Section 14.8 Surrender of Leased Property; Holding Over.** Upon termination or the expiration of this Lease, Lessee shall peaceably quit, deliver up, and surrender the Leased Property and, subject to the provisions of this Agreement, the Improvements that are then located on the Leased Property. If Lessee does not surrender possession of the Leased Property and the Improvements at the end of the Term, such action shall not extend the Term, Lessee shall be a Lessee at sufferance, and during such time of occupancy Lessee shall pay to the County, as damages, an amount equal to 125% the amount of Rent that was being paid immediately prior to the end of the Term, prorated on a daily basis. The County shall not be deemed to have accepted a surrender of the Leased Property by Lessee, or to have extended the Term, other than by execution

of a written agreement specifically so stating. In addition, Lessee's obligations to restore the Leased Property shall be in accordance with Section 5.5 and Article VIII.

**Section 14.9 Relation of Parties.** It is the intention of the County and Lessee to hereby create the relationship of lessor and lessee, and no other relationship whatsoever is hereby created. Nothing in this Lease shall be construed to make the County and Lessee partners or joint venturers or to render either party hereto liable for any obligation of the other.

**Section 14.10 Force Majeure.** As used herein "**Force Majeure**" means the occurrence of any event or circumstance (including, but not limited to, any aircraft accidents on or near the Leased Property or any restriction by a governmental authority which restricts Lessee's use of the Leased Property) which prevents or delays the performance by the County or Lessee of any obligation imposed upon it hereunder (other than payment of Rent) and the prevention or cessation of which event is beyond the reasonable control of the obligor. If Lessee shall be delayed, hindered, or prevented from performance of any of its obligations (other than to pay Rent) by reason of Force Majeure (and Lessee shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by Lessee:

(a) Lessee shall give prompt written notice of such occurrence to the County;  
and

(b) Lessee shall diligently attempt to remove, resolve, or otherwise eliminate such event, keep the County advised with respect thereto, and shall commence performance of its obligations hereunder immediately upon such removal, resolution, or elimination. Anything contained in or inferable from this Lease to the contrary notwithstanding, Lessee shall not be relieved by any event of Force Majeure from Lessee's obligations to pay Rent hereunder, nor shall the Term be extended thereby.

**Section 14.11 Entireties.** This Lease constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements (whether written or oral) with respect thereto are merged herein. Any agreements entered into between the County and Lessee of even date herewith are not, however, merged herein.

**Section 14.12 Consents and Approvals.** If and to the extent the consent, approval or similar action of any of the parties hereto is required under this Agreement or applicable law, the County and Lessee agree that such consent shall not be unreasonably withheld, conditioned or delayed.

**Section 14.13 Recordation.** The County and Lessee will, at the request of the other, promptly execute an instrument in recordable form constituting a memorandum or short form of this Lease (or any amendment hereto), which shall be filed for record in the County of Riverside, or at the request of either party this Lease shall be so filed for record. In addition, Lessee may, at its sole cost, obtain a leasehold policy of title insurance with respect to its interest in this Lease. Upon expiration or termination of this Lease, Lessee shall execute and record in the County of Riverside a release of this leasehold interest.

**Section 14.14 Successors and Assigns.** This Lease shall constitute a real right and covenant running with the Leased Property, and, subject to the provisions hereof pertaining to Lessee's rights to assign, sublet, or encumber, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

**Section 14.15 No Third Parties Benefited.** Except as herein specifically and expressly otherwise provided with regard to notices, opportunities to cure defaults, right to execute a new lease, and certain other enumerated rights granted to Permitted Mortgagees, the terms and provisions of this Lease are for the sole benefit of the County and Lessee, and no third party whatsoever, is intended to benefit herefrom.

**Section 14.16 Survival.** Any terms and provisions of this Lease pertaining to rights, duties, or liabilities extending beyond the expiration or termination of this Lease shall survive the end of the Term.

**EXHIBITS:**

- Exhibit "A":** Legal Description of Leased Property
- Exhibit "B":** Depiction of Leased Property
- Exhibit "C":** Minimum Standards for Fixed Base Operators
- Exhibit "D":** Federally Required Lease Provisions
- Exhibit "E":** The Storm Water Pollution Prevention Plan
- Exhibit "F":** FAA Airport Compliance Requirements
- Exhibit "G":** Avigation Easement Form
- Exhibit "H":** Consent to Mandatory Consent Transaction Form

*[remainder of page intentionally left blank – signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: Marion Ashley  
Marion Ashley, Chairman  
Board of Supervisors

ATTEST:  
KECIA HARPER-IHEM, Clerk  
By: [Signature]  
DEPUTY

**LESSEE:**

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By: \_\_\_\_\_  
Tim Hemig, Vice President

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 12-13-10  
SYNTHIA M. GUNZEL DATE

[SIGNATURE OF LEASE]

DEC 14 2010 329

IN WITNESS WHEREOF, the parties have executed this Lease and made it as of the Effective Date.

**THE COUNTY:**

THE COUNTY OF RIVERSIDE,  
*a political subdivision of the State of California*

By: \_\_\_\_\_  
Marion Ashley, Chairman  
Board of Supervisors

**LESSEE:**

NRG SOLAR BLYTHE II,  
*a Delaware limited liability company*

By:  \_\_\_\_\_  
Tim Hemig, Vice President

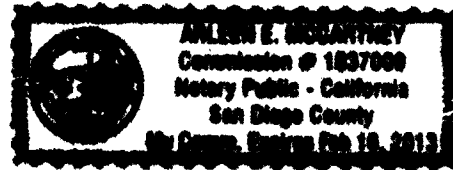
State of California )  
County of SAN DIEGO

On December 8, 2010, before me, ARLENE MCCARTNEY, a notary public for said county and said state, personally appeared TIM HENIG who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Arleen E McCartney (Seal)



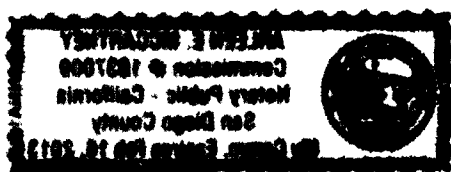
State of California )  
County of \_\_\_\_\_

On \_\_\_\_\_, 2010, before me, \_\_\_\_\_, a notary public for said county and said state, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT A**

**Leased Property Legal Description**



**EXHIBIT "A"**  
**US SOLAR PHASE I LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

THOSE PORTIONS OF TRACTS 15, 17, 18 AND 19 AS DESCRIBED IN QUITCLAIM DEED RECORDED DECEMBER 14, 1948, IN BOOK 1035, PAGE 520, OFFICIAL RECORDS OF RIVERSIDE COUNTY, LYING WITHIN PORTIONS OF SECTIONS 29, TOWNSHIP 6 SOUTH, RANGE 22 EAST, SBM, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 9 OF PARCEL MAP NO. 14093 AS SHOWN ON FILE IN BOOK 105 OF PARCEL MAPS, PAGE 78 THROUGH 87, INCLUSIVE, OFFICIAL RECORDS OF SAID COUNTY;

THENCE NORTH 00°59'12" WEST 520.01 FEET ALONG THE WEST LINE OF SAID PARCEL 9 TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 29, ALSO BEING THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88°44'21" WEST 1456.49 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 520.00 FEET NORTHERLY, AS MEASURED AT RIGHT ANGLES, FROM THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29;

THENCE SOUTH 89°14'05" WEST 351.53 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1808.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID PARCEL 9;

THENCE NORTH 00°59'12" WEST 2100.07 FEET ALONG SAID PARALLEL LINE TO A POINT LYING PARALLEL WITH AND 1808.00 FEET WESTERLY, AS MEASURED AT RIGHT ANGLES, FROM THE WEST LINE OF SAID PARCEL 9;

THENCE NORTH 01°39'08" WEST 1674.38 FEET ALONG SAID PARALLEL LINE;

THENCE NORTH 89°13'07" EAST 1808.21 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 9;

THENCE SOUTH 01°39'08" EAST 1657.41 FEET ALONG SAID WEST;

THENCE SOUTH 00°59'12" WEST 2104.95 FEET ALONG SAID WEST LINE TO THE TRUE POINT OF BEGINNING.

**EXHIBIT "A"**  
**US SOLAR PHASE I LEASE BOUNDARY**  
**LEGAL DESCRIPTION**

**EXCEPTING THEREFROM THAT PORTION CONVEYED TO BALLARD JENKINS, ET AL, BY DEED RECORDED OCTOBER 1, 1959 AS INSTRUMENT NO. 84235 OF OFFICIAL RECORDS.**

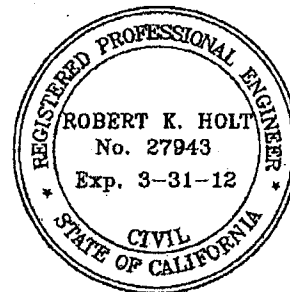
**ALSO EXCEPTING THEREFROM ALL URANIUM, THORIUM AND ALL OTHER MATERIALS DETERMINED PURSUANT TO SECTION 5 (B) (1) OF THE ATOMIC ENERGY ACT OF 1946 (80 STAT. 763) TO BE PARTICULARLY ESSENTIAL TO THE PRODUCTION OF FISSIONABLE MATERIAL AS RESERVED BY THE UNITED STATES OF AMERICA IN INSTRUMENT RECORDED DECEMBER 14, 1984 IN BOOK 1035, PAGE 520 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA**

DESCRIBED PARCEL CONTAINS 156.46 ACRES.

FOR GRAPHICAL PURPOSES SEE EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

Prepared under the supervision of:

\_\_\_\_\_  
Date: \_\_\_\_\_  
Robert K Holt, RCE 27943  
Expires 3/31/2012  
The Holt Group, Inc  
201 E Hobsonway  
Blythe, CA 92225  
(760) 922-4658



**EXHIBIT B**

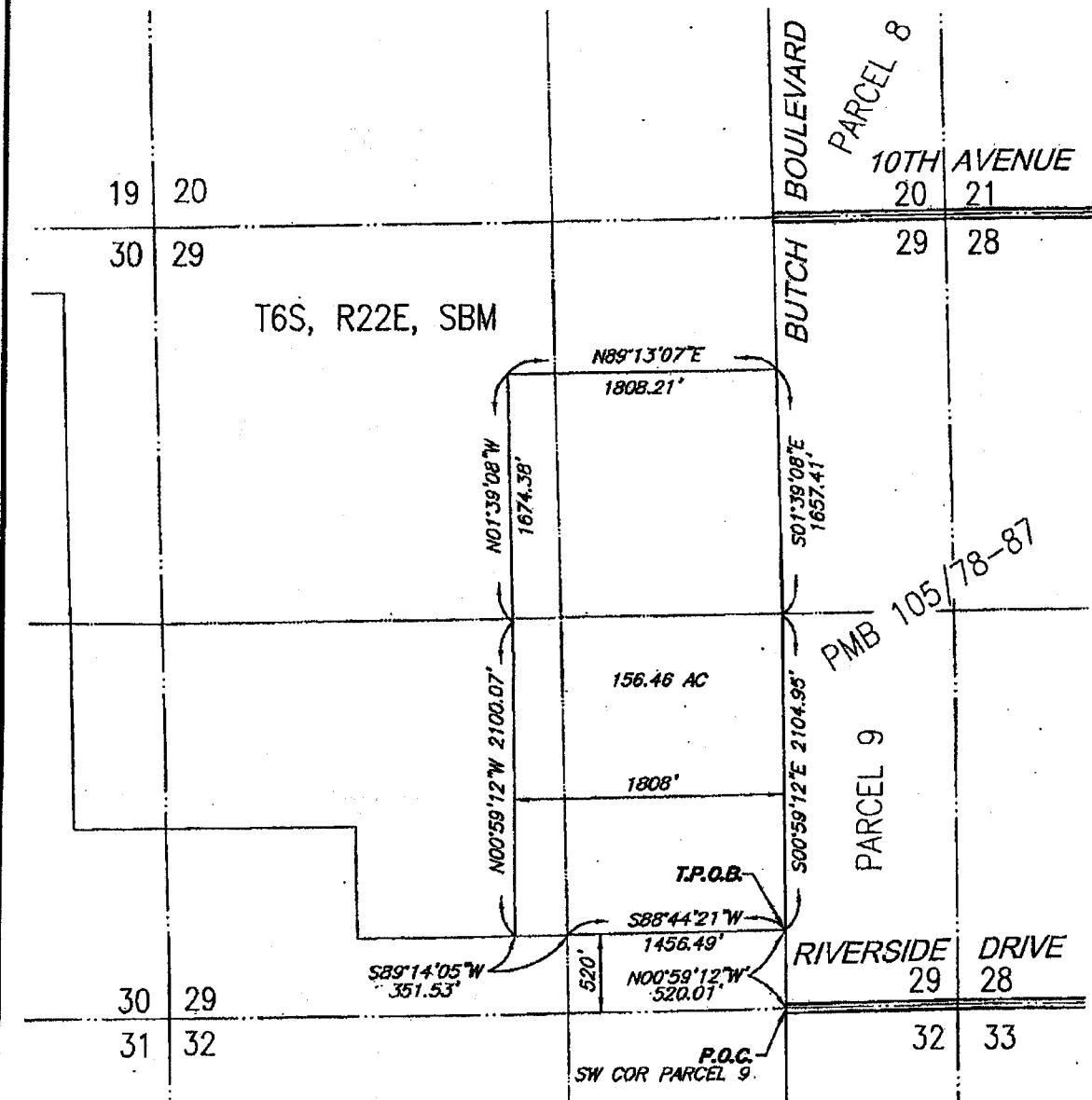
**DEPICTION OF LEASED PROPERTY**

[To be attached]

# EXHIBIT "B"

US SOLAR PHASE I

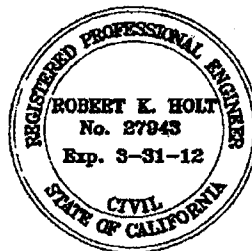
SHEET 1 OF 1



REV. 12/08/2010 BY: TJH

**The Holt Group, Inc.**  
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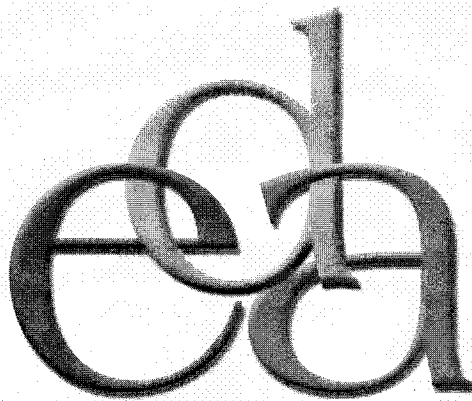
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**EXHIBIT C**  
**MINIMUM STANDARDS FOR FIXED BASE OPERATORS**

[Attached hereto and made a part hereof]

# **Minimum Standards for Fixed Base Operators**

Riverside County Airports



RIVERSIDE COUNTY  
**Economic Development Agency**

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Economic Development Agency**  
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Adopted January 30, 2001

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## **I. INTRODUCTION**

Riverside County is the owner (sponsor) of the following five airports in Riverside County: Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan. The Riverside County Economic Development Agency (EDA) is the county agency responsible for operation of the County's airports.

Minimum standards are established to promote and attract a professional level of aviation services to the County's airports while safeguarding the public's interest. The Minimum Standards provide a framework that strengthens the relationship between the Sponsor and the Fixed Base Operator (FBO). They offer information, advice and, where necessary, they provide strict regulation so that both the prospective and experienced FBO may have a firmer understanding of the many considerations, which contribute to a safe, successful and useful operation. The standards are intended to be the minimum requirements for those wanting to provide aeronautical services to the public at Riverside County airports. Operators are encouraged to exceed the minimum requirements.

FBOs are responsible for complying with the Minimum Standards and shall be familiar with revisions made to the Standards. All FBOs on the airports must comply with the standards herein as well as all applicable government regulations; however, leases executed prior to August 16, 1988, are exempt until lease renegotiations. The County's airports are subject to federal, state and local rules and regulations. The County has adopted local rules and regulations to implement Federal Aviation Administration (FAA) requirements and to provide for safe and orderly operation on the airports. Local rules and regulations governing airport activities include, but are not limited to, applicable portions of the following:

1. Ordinance No. 576 - Rules and Regulations for Operation of County Airports
2. Fixed Base Operator Minimum Standards
3. County Airport Fueling Standards
4. Special Event Permit Policy
5. Airport Design Standards

Federal and state rules and regulations include, but are not limited to: FAA Grant Assurances; FAA Order 5190.6A - Airport Compliance Requirements; Federal Airport Regulations (FAR's); State Aeronautics Act (PUC § 21000); Government Code § 50470 - 50478; ADA Regulations; the California Environmental Quality Act (CEQA); and the National Environmental Policy Act (NEPA).



## II. DEFINITIONS

AERONAUTICAL ACTIVITY - Any activity or service that involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations.

AGREEMENT, LEASE, OR PERMIT - A contractual agreement between the EDA and an entity granting a concession or otherwise authorizing the conduct of certain activities which is in writing, executed by both parties, and enforceable by law.

AIRPORT - Includes the following five (5) airports owned by Riverside County: Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan, and its environs, such as, the property, buildings, facilities, and improvements within the exterior boundaries of each airport as it now exists or as it may hereafter be extended, enlarged, or modified.

AIRPORT SPONSOR - The designated entity or duly authorized representative, appointed by the Board of Supervisors, to manage the operation and development of Blythe, Chiriaco Summit, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan airports.

ALP - Airport Layout Plan

APPLICANT - A person, persons, firm, partnership, or corporation desiring to acquire the use of a portion of an airport, or to establish or use any facility on an airport for an aeronautical activity or special event and who shall apply in writing and in the manner or form prescribed for authorization to establish such activities.

CEQA - California Environment Quality Act

COUNTY - County of Riverside, the FAA authorized airport sponsor.

EDA - Riverside County Economic Development Agency, the County agency designated to oversee and manage the County airports.

EQUIPMENT - All machinery, together with the supplies, tools, and apparatus necessary for the safe and proper procedure of the activity being performed.

FAA - Federal Aviation Administration

FAR - Federal Aviation Regulation

FIXED BASE OPERATOR (FBO) - Any person, firm, partnership, corporation, association, limited partnership, or any other legal entity duly licensed and authorized by written agreement with the Airport Sponsor (the County) to provide specific aeronautical services at an Airport, under strict compliance with such agreement and pursuant to these and all applicable regulations and standards.

FUEL - FAA authorized aviation fuel, including jet fuel

FUEL FARM - Any portion of an Airport, authorized by the Airport Sponsor, as an area in which gasoline or any other type of fuel may be stored.

FULL SERVICE FBO - An FBO which provides certain essential aeronautical services (e.g. aircraft maintenance and repair, flight instruction, fueling of aircraft, transient aircraft parking guidance, positioning of wheel chocks and tie-downs, fireguard for engine starts, baggage handling, standardized ground service and recovery equipment, pilots' lounge, and restrooms), subject to restrictions agreed to during lease negotiations (see Table A below for complete guidelines).

LIMITED SERVICE FBO - An FBO which provides certain of the aeronautical services provided by a Full Service FBO, subject to restrictions imposed by leasehold size requirements and to restrictions agreed to during lease negotiations (see Tables B through H below for complete guidelines).

MINIMUM STANDARDS - The qualifications and criteria set forth herein as the minimum requirements to be met as a condition for an FBO to conduct an aeronautical activity on an EDA sponsored airport.

NEPA - National Environmental Policy Act

THE BOARD - The Riverside County Board of Supervisors

TLMA - Transportation and Land Management Agency

### **III. AIRPORT RULES AND REGULATIONS**

#### **A. Lease**

All revenue generating, commercial and/or business activities, at County operated airports are required to secure a lease approved by the County Board of Supervisors (the "Board") prior to commencement of any commercial activity.

Prospective lessees should begin the process by requesting a meeting with County staff. The purpose of the initial meeting is to introduce staff, show the available sites,

and answer any questions. At the conclusion of this meeting the prospective lessee will be asked to submit a Lease Application and proposal.

Upon receipt of a lease application and proposal, County staff will review the proposal and will provide a written response. Once an agreement has been reached on the deal points and development proposal, a lease will be prepared for execution by the lessee. The lease shall be executed in three counterparts and all three copies shall be returned to the County. The County will then schedule the lease for consideration at the next available Board of Supervisors' meeting. ***Please be advised that the County Board of Supervisors is the only entity that can make a binding lease commitment and development may not proceed until the Board has approved the lease.***

Exclusive rights for any aeronautical activity will not be issued at any County airport. This is to ensure that airport patrons are offered competitive market prices for services.

#### **B. Airport Layout**

All new leases and new airport development shall comply with the current FAA approved Airport Layout Plan (ALP) for each airport. In addition, Jacqueline Cochran Regional, French Valley, and Hemet-Ryan airports have adopted Airport Master Plans and all new development shall comply with those master plans. Lessee proposals that conflict with ALP's and Master Plans will not be approved.

#### **C. Signs**

All signs (commercial, traffic, services, advertising, etc.) must receive written approval from the Assistant County Executive Officer / EDA or Designee prior to their placement. The request for approval should include the size, location, and design of sign. All outdoor advertising shall comply with County Ordinance No. 348 and applicable federal and state laws. FAA Form 7460-1, *Building Design, Construction, and/or Alteration*, must be submitted to the FAA Western Pacific Region for review and determination, with a copy of the form sent to the Assistant County Executive Officer / EDA

#### **D. Building Design, Construction, and/or Alterations**

All design, construction and/or alterations shall be in compliance with Airport Design Guidelines. The County reserves the right to review and approve all architectural design of all construction or alterations to be performed on County operated airports.

The County reserves the right to review and approve the design and construction methods of all development at the County operated airports. All buildings shall comply with local codes and regulations as to their construction. FAA Form 7460-1, *Building Design, Construction, and/or Alteration*, must be submitted to the FAA for their review

and assessment with a copy of the form submitted to the Assistant County Executive Officer / EDA.

The County reserves the right to require a Material and Performance Bonds or a Letter of Credit prior to the construction of any facility for the return of funds expended by the County in the event that the applicant defaults on any obligations.

#### **E. Inspections**

The County reserves the right to make periodic inspections of the leased premises during reasonable hours to ensure lease compliance and Lessee's adherence with all applicable regulations. County staff, County contractors, the FAA, and/or the State of California may conduct inspections, under this provision.

#### **F. Flying Clubs**

All flying clubs located at Riverside County operated airports shall be nonprofit organizations. All rights shall be equally shared between members. No member shall share in profits, earnings, salaries, or other forms of compensation. The Flying Club shall not be engaged in any type of commercial operation. A copy of the Flying Club's Charter and By-laws, or other comparable documents, must be filed with the Aviation Division. Flying clubs must submit annual financial reports and furnish the County with proof of insurance of the types listed on Appendix A.

A minimum of one (1) aircraft, properly certified, is required for a flying club. Flight instruction shall only be offered to club members. The instructor must be a club member or an instructor who is a lessee on the airport for the purpose of flight instruction.

#### **G. Waiver from Minimum Standards**

Any tenant or prospective tenant wishing to waive any minimum standard set forth in the approved Minimum Standards must submit a letter to the Assistant County Executive Officer / EDA expressing their hardship to conform with the Minimum Standards. The Assistant County Executive Officer/EDA has the discretion of approving or disapproving the waiver as it would apply to the future viability of the airport, subject to applicable provisions, which may be contained in the tenant's lease approved by the Board. Waivers may be granted on a temporary basis, and may be withdrawn or terminated at the Director's discretion.

#### **H. Civil Rights**

All individuals using the County operated airports must comply with all the provisions of the Federal Civil Rights Act of 1964. The tenant or prospective tenant shall ensure

there shall be no discrimination in the availability of any services or commodities based on race, religious creed, color, national origin, ancestry, sex, age, physical handicap, medical condition or marital status.

#### **I. Insurance**

The FBO shall procure, maintain and pay premiums during the term of the agreement for insurance of the types and the minimum limits set forth by the County for each aeronautical activity. The FBO shall obtain and maintain insurance (See Appendix A), which contains an endorsement that the "County of Riverside, including its elected officials, officers, employees, and agents" are named as additional insured. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California unless such requirement is waived, in writing, by the Assistant County Executive Officer / EDA and/or the County Risk Manager. Each insurance company shall have an A.M. BEST rating of not less than A:VIII (A:8).

Proof of insurance must be submitted to the Assistant County Executive Officer / EDA prior to commencement of operations and upon each insurance renewal. The FBO shall provide either 1) a properly executed original Certificate(s) of Insurance and 'certified original' copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the Assistant County Executive Officer / EDA and/or County Risk Manager, provide original Certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Certificate(s) shall contain the covenant that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration, or reduction in coverage of such insurance. Certificates of Insurance and the policies shall covenant that their coverage is primary and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as primary.

If any policy contains a general aggregate limit, it shall apply separately to the Agreement with the County or be less than two (2) times the occurrence limit. All insurance policies are subject to review by the County's Department of Risk Management. The Assistant County Executive Officer / EDA, upon the advice of the County Risk Manager, reserves the right to increase the limits, or require additional insurance coverage, beyond those set forth in these Minimum Standards, subject to applicable provisions of the tenant's lease.

#### **J. Lot Size**

Lot sizes may vary according to the type of operation. If available, aircraft tie-downs and hangar space, as well as automobile parking spaces, may be leased from the County to meet these minimum standards. The number of aircraft, hangar, or automobile parking spaces shall be determined during lease negotiations.

**K. Outdoor Storage**

No outside storage will be permitted except behind enclosed block walls, screened from public view, or as approved by the Assistant County Executive Officer / EDA.

**L. Maintenance**

Lessee shall be responsible for the adequate maintenance of leased property and in compliance with all applicable Federal, State and Local health and safety regulations.

**IV. SCOPE OF SERVICES**

Each aeronautical activity has a separate scope of services. The services required of a Full-Service FBO include the Minimum Standards for all combinations of aeronautical activities. The cumulative effect of the Minimum Standards will not equate to any minimum standard greater than that applicable to the Full-Service FBO.

**Table A - FULL SERVICE FBO**

Each airport shall have a minimum of one (1) Full Service FBO. **Mandatory Requirements:** Full Service FBOs shall provide: aircraft maintenance & repair; flight instruction; fueling of aircraft; transient aircraft parking guidance; positioning of wheel chocks and tie-downs; fireguard for engine starts; baggage handling upon request; have available and provide standardized ground service equipment and recovery equipment for aircraft weighing up to 30,000 lbs at FVA, 40,000 lbs at HRA, and 80,000 lbs at JCRA (service and recovery equipment shall include, but not be limited to, wheel chocks, tie-down ropes or chains, aircraft jacks, tow bars, auxiliary power units, and aircraft tugs); pilots' lounge; and restrooms. **Optional Requirements:** In addition to the required services listed in the preceding sentence, Full Service FBOs may provide: aircraft sales or leasing (including financing), sales of aircraft parts and supplies, radio and avionics sales and repair, aircraft storage hangars and tie-downs, painting and upholstering of aircraft, leasing or renting of automobiles, and operating a restaurant or café.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 3 acres or 130,680 SF		
Hangar area	14,000 SF	For aircraft storage
Outside storage area	30,000 SF	For tie-down or apron parking
Building space	2, 000 SF	For offices, pilots' lounge and briefing area, conference rooms, classrooms, and restrooms
Automobile parking	20 spaces, with landscaping as required by Ordinance 348	For employees per shift and customer parking
Fuel farm	Refer to Fueling Standards	
Landscaping	To be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and building
<b><u>CERTIFICATION:</u></b>		
As applicable for each activity	FAA, State, and/or other responsible agency as applicable	For safe and efficient operation of airport and aeronautical activities
<b><u>PERSONNEL:</u></b>		
Staff	Adequate number	For safe and efficient operation of airport and aeronautical activities
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	7 days/week, 10 hrs/day	Or as demand may require
Fueling services	During business hours and emergency situations	One (1) hr response time during non-business hours
<b><u>EQUIPMENT:</u></b>		
Aeronautical operations	Refer to tables for equipment required for each activity	
FBOs providing aircraft fueling and servicing	Refer to Airport Fueling Standards	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table B - AIRCRAFT MAINTENANCE**

An aircraft airframe, engine, and accessory maintenance and repair FBO shall provide one or a combination of airframe, engine, and accessory overhauls and repair services on aircraft up to and may include business jet aircraft and helicopters. This category shall include the sale of aircraft parts and accessories.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> ½ acre or 21,780 SF		
Hangar area	6,000 SF	For aircraft storage
Tie-down or apron parking	One (1) per 1,000 SF of hangar space	Outside storage
Building space	400 SF	For offices, public phone, and restrooms
	200 SF	Office storage room
Automobile parking	One (1) per 1,000 SF of hangar area, with landscaping as required by Ord. 348	For employees per shift and customer parking
Landscaping	Specific plans to be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and building
<b><u>CERTIFICATION:</u></b>		
Station	Authorized repair station and certified under FAR Part 145 or Holder of an FAA inspection authorization under FAR Part 43	
<b><u>PERSONNEL:</u></b>		
Staff	Sufficient qualified technicians to meet proposal.	
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Services	5 days/week, 8 hrs/day	
	Services offered for emergency situations	One (1) hr response time during non-business hours
<b><u>EQUIPMENT:</u></b>		
Sufficient inventory and equipment available to perform maintenance and repairs to manufacturers' specifications.	Should include but is not limited to tug, tow bar, jacks, and dollies	Operator is encouraged to have the capability of aircraft removal from the airport's operational areas
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		



**Table C - RADIO AND AVIONICS REPAIR STATION & SALES**

A radio and avionics repair station FBO engages in the business of and provides a shop for the repair of aircraft avionics, instruments and accessories for general aviation aircraft. This category also includes the sale of new or used aircraft avionics, instruments and accessories.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 150 SF		
Repair station	150 SF	
Automobile parking	One (1) space per 150 SF, with landscaping as required by Ord. 348	
<b><u>CERTIFICATION:</u></b>		
Station	Authorized repair station and certified under FAR Part 145	
<b><u>PERSONNEL:</u></b>		
Staff	One (1) FAA certified repairman	
Certification & training	Proper certification and training	To comply with all applicable regulations
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment for at least 40 hrs/week	
<b><u>EQUIPMENT:</u></b>		
Sufficient inventory and equipment available to perform maintenance and repairs to manufacturers' specifications.		
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table D - FLIGHT INSTRUCTION**

A flight instruction FBO engages in instructing pilots in dual and solo flight training, in fixed and/or rotary wing aircraft, and provides such related ground school instruction as is necessary preparatory to taking a written examination and flight check ride for the category or categories of pilots' licenses and ratings involved.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<u>LOT SIZE:</u> 500 SF (not necessarily contiguous)		
Classroom space	200 SF or as appropriate to the size of student population	For classroom instruction
Office and lobby areas	300 SF	For phones, restrooms, and space for adequate customer service
Automobile parking	3 spaces per aircraft, 2 for each additional for a maximum of 10 spaces, with landscaping as required by Ord. 348	For students and employees
Other	Any additional space necessary to house all owned or leased aircraft	
<u>PERSONNEL:</u>		
Staff	One (1) certified flight instructor	To be available during normal hours of operation
	One (1) qualified ground school instructor	For classroom instruction
<u>HOURS OF OPERATION:</u>		
Business Hours	Available for appointment for at least 40 hrs/week	
<u>EQUIPMENT:</u>		
Aircraft	One (1) single-engine aircraft	Available for flight training
<u>INSURANCE:</u>		
Refer to Appendix A		

**Table E - AIRCRAFT SALES AND LEASING**

An aircraft sales and/or lease FBO engages in the sale and/or lease of aircraft to the public. New aircraft sales involve the sale of new aircraft through franchises or licensed dealerships (if required by local, county, or state authority) or distributorship (on either a retail or wholesale basis) of an aircraft manufacturer. Aircraft sales FBOs may also engage in the sale of used aircraft. This can be accomplished through various methods, including matching potential purchasers with an aircraft (brokering), assisting a customer in the purchase or sale of an aircraft, or purchasing used aircraft and marketing them to potential purchasers. A new aircraft sales and/or leasing FBO must show capability to support maintenance agreements for aircraft sold or leased. A used aircraft sales FBO may also provide such repair, services, and parts as may be necessary to support the operation of aircraft sold. Some requirements may not be appropriate to the sale of used aircraft because of each aircraft's unique operational history. An aircraft sales FBO may also finance aircraft purchases, subject to the applicable licensing requirements.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 150 SF		
Building space	150 SF	For offices, lobby area, public phone, and restrooms
Tie-down/Hangar space	Adequate number	Storage
Automobile parking	One (1) per employee One (1) per 500 SF of leased space With landscaping as required by Ord. 348	For employees per shift and customer parking
Landscaping	Specific plans to be determined during lease negotiations.	Landscaping required around vehicle parking, sidewalks, and buildings
<b><u>CERTIFICATION:</u></b>		
New aircraft	Dealers must possess sales and/or distribution franchise from a recognized aircraft manufacturer	
Aircraft available for sale and leasing	Aircraft must hold FAA registration and current airworthiness certificate	
<b><u>PERSONNEL:</u></b>		
Staff	One (1) commercial, qualified for aircraft type.	For demonstration of aircraft
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment at least 40 hrs/week	
<b><u>EQUIPMENT:</u></b>		
	Minimum equipment required shall be determined during lease negotiations.	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		

**Table F - AIRCRAFT STORAGE**

An aircraft storage FBO engages in the construction, rental, and maintenance of conventional hangars or multiple T-hangars.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> 1acre or 43,560 SF		
Storage area of the following or proportionate combination of:	1. Minimum of ten (10) T-Hangars to max of fourteen (14) per acre, or 2. Apron tie-down space of a minimum of 15 aircraft per acre, or 3. Conventional hangar of 10,000 SF. 4. Box hangars - Plot Plan subject to EDA and BOS approval	
Automobile parking	One (1) for every two (2) hangars, with landscaping as required by Ord. 348	Automobile parking separate from aircraft storage area
Landscaping	Specific plans to be determined during lease negotiations	Landscaping required around vehicle parking, sidewalks, and buildings
<b><u>PERSONNEL:</u></b>		
Staff	One (1) contact person	To be available during the normal work week (M-F, 8am-5pm)
<b><u>HOURS OF OPERATION:</u></b>		
Minimum via phone contact	5 days/week, 8 hrs/day	
<b><u>INSURANCE:</u></b>		
Refer to Appendix A		
<b><u>ADDITIONAL GUIDELINES:</u></b>		
The County and Full Service FBOs shall possess the right to provide and operate the public aircraft storage areas unless circumstances warrant otherwise. No business activities shall be operated from storage areas.		

**Table G - AGRICULTURAL APPLICATION**

An agricultural application FBO engages in air transportation for hire for the purpose of providing the use of aircraft for agricultural operations such as, but not limited to, crop dusting, seeding, spraying, and bird chasing.

<u>REQUIREMENT</u>	<u>MINIMUM STANDARD</u>	<u>PURPOSE / OTHER</u>
<b><u>LOT SIZE:</u></b> ½ acre or 21,780 SF		
Apron, tie-down area	6,000 SF	Storage
Building space	400 SF	For offices, lobby, public phone, and restrooms
Chemical storage	400 SF	
Automobile parking	Minimum of five (5) parking spaces, with landscaping as required by Ord. 348	For number of employees per shift and average number customers
Landscaping	Specific plans to be determined during lease negotiations	Required around vehicle parking, sidewalks, and buildings
<b><u>CERTIFICATION:</u></b>		
Permits and certificates	Must be submitted to Assistant County Executive Officer / EDA or Designee prior to operations. Furnished to EDA Assistant County Executive Officer/EDA or Designee as received. Procure and maintain FAR Part 137 Commercial Agricultural Operators Certificate. Possess Hazardous Materials Management Permit	County Ordinance No. 615
Renewals		
Agricultural Application Operator		
Hazardous Materials Management Permit		
<b><u>PERSONNEL:</u></b>		
Staff	Minimum number to be determined during lease negotiations. Personnel must be knowledgeable about the safe handling of poisons and agricultural chemicals and the proper disposal of substances intended to be used in operations.	
Certification & training		
<b><u>HOURS OF OPERATION:</u></b>		
Business Hours	Available for appointment for a minimum of 40 Hrs/week	Services offered 7 days/week
<b><u>EQUIPMENT:</u></b>		
To be determined during lease negotiations.		
<b><u>INSURANCE:</u></b>		
Refer to Appendix		